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The Social Construction of Formal Adult Cautioning by Police: An Ethnographic Study

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**Thesis submitted to Middlesex University for the
degree of Doctor of Philosophy**

December 2001

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The Social Construction of Formal Adult Cautioning by Police: An Ethnographic Study

Abstract

Since its official introduction in England and Wales during 1985, the formal cautioning of adult offenders by police has grown to become a significant mechanism by which certain offenders are diverted from the criminal justice system. Currently some 30% of adult male offenders and 45% of adult female offenders arrested by the police are dealt with in this way. Cautioning is a procedural mechanism by which the police, contingent upon their adherence to the provisions of national guidelines, can elect to deal with certain criminal cases by means other than prosecution. Instead, they can choose to 'divert' the suspect from the court system by administering a formal caution; signed for by the suspect; often accompanied by verbal censure by a senior police officer; recordable on centralised police criminal indices; subject to the allocation of a CRO (criminal records office) number and citable in any subsequent court proceedings as a previous finding of guilt.

The official rhetoric of cautioning espouses the virtues of *benevolence* through the provision of a second-chance for first time and petty offenders, allowing them to turn away from further offending, as well as *efficiency* through the speedy and timely management and disposal of cases not considered to be in the public interest to prosecute. But the burgeoning use of formal cautioning by the police has created problems of inconsistency, inequity and misapplication through repeat cautioning and its inappropriate use in cases of serious crime such as rape and murder.

The fundamental principles of cautioning have also been criticised for eroding a suspect's due process rights such as the right to trial, the right to have prosecution evidence rigorously tested through an adversarial process that secures the right to legal counsel, a process that demands proof beyond reasonable doubt and which is subject to external review through an appeals process. These safeguards are almost completely absent with cautioning. Furthermore, the mechanisms by which police cautioning decisions are regulated have also been found wanting following research that suggests that the national guidelines are poorly defined, non-prioritised and provide for excessive latitude for police decision makers.

This research project is an investigation into both the theory and practice of formal adult cautioning by the police. At its centre is a two-year covert participant-observational study of the police work-world and of the ways in which cautioning, as intentional social action, draws meaning from and can be located within this occupational culture. Building upon a comprehensive review of available literature and consideration of the methodological and ethical issues created by the research, the thesis sets out to examine the true nature of the cautioning of adult offenders by the police in its natural setting – the custody office - and uses data drawn from officer and suspect interactions as the basis for a detailed analysis of how, why and by whom cautioning decisions actually come to be made. From this analysis conclusions have been drawn and recommendations made concerning how this disposal method might develop in the future and how existing problems might be overcome leading to a new, more consistent and equitable system of cautioning.

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Chapter 1 – An introduction to formal adult cautioning by the police

Defining a problematic

In situations covered by cautions ... the police can engage in unilateral construction. They are able to do this because the cautioning process is essentially inquisitorial. This process enables them to create any preconditions, such as the 'consent', which the suspect is required to give prior to being cautioned. On a deeper and more fundamental level, it enables the police to construct criminality. This is strikingly so in cases which are terminated by police-determined decisions such as giving the suspect a warning or administering an official caution ... the caution decision is wholly under the control of the police, there is no possibility of external review or challenge. (McConville, Sanders & Leng, 1991, pp. 77, 81)

Everyday in England and Wales, police are being judge and jury in their own police stations. They are able to do this by choosing to dispose of certain arrested persons and the criminal offences they are suspected to have committed using a system of formal cautioning rather than opting to pursue a prosecution in such cases. A formal caution is an official means by which the police can deal with criminal cases outside of the courts, it represents a finding of guilt, is recordable on police indices and can be cited in any future court proceedings should the suspect offend again, but it is presumed to be a diversion from prosecution, a means by which the police can turn suspects away from the potentially damaging consequences of entry into the criminal justice system, and by so doing, offer them a second chance.

This system of formal cautioning is provided for by the Attorney General's guidelines on prosecution decision-making (1983) and by the 'National Standards

for Cautioning Offenders' issued by the Home Office (1994). These guidelines and standards set out for the police the conditions that have to be met before an arrested person can be considered suitable, and their case deemed to be one appropriate to be dealt with by way of caution as opposed to prosecution. They make explicit a general presumption against prosecution under certain specified pre-conditions, 'a presumption in favour of a course of action which falls short of prosecution unless the seriousness of the offence or other exceptional circumstances dictates otherwise.' (Home Office, 1985).

The pre-conditions set out in the cautioning guidelines require that, before a caution can be administered by the police, there should be a sufficiency of evidence in the case; that the suspected person should openly admit guilt; should provide informed consent to the caution and sign for it, and that the offence in question should not be so serious as to render this disposal outcome inappropriate. (Home Office, 1994). The cautioning pre-conditions are intended to boundary and de-limit case disposal decision-making by the police and safeguard suspects' due process rights such as 'legality, consistency, accountability, proportionality and rigorous handling of evidence and argument' (Dingwall & Harding, 1998, p.16). At the same time the cautioning pre-conditions seek to ensure both consistency and credibility in the application of the formal cautioning process as a national diversionary strategy.

These pre-conditions are intended to ensure that, because a caution is a statement of guilt (which can be cited in court), the offender really is guilty and would be convicted if prosecuted. They are due-process safeguards, intended to inhibit the police from cautioning whenever they adjudge a suspect to be guilty but they cannot or would rather not, collect sufficient evidence to support a caution. As a mechanism for protecting innocent suspects from administrative determination of guilt, the pre-conditions have been found wanting. (Sanders & Young, 1994, p.231)

The decision to prosecute cases or to divert them from prosecution is one for the police alone, Home Office 'Circular 59/1990 left cautioning decisions to the discretion of the police; there is no intention of reducing this discretion.' (Home Office, 1994). Should they elect to prosecute, the police must progress the case by preferring a charge or summons against the suspect and then arrange for his appearance before a court to stand trial. Case papers must be prepared and submitted to the Crown prosecution Service (CPS), who have a statutory mandate to review the evidence and pursue the prosecution on behalf of the state should the case be deemed one likely to produce a conviction which is in the public interest. Where the police elect not to pursue a case through the courts in this way, they may divert the case from prosecution by administering an official caution or by taking no further action (NFA). If they decide to consider a caution they are required to process the case in accordance with the national guidelines on cautioning which embody the pre-conditions mentioned above. These pre-conditions are not statutory requirements, that is to say they are not law but rather, exist as a set of guidelines, breaches of which carry no legal sanction.

The question as to whether a suspected individual openly admits guilt in a given case and the means by which this admission is achieved, together with questions concerning whether the evidence is sufficient to produce the likelihood of a conviction (had the case gone to court) rests with the police, who are likewise wholly responsible for ensuring the suspect provides informed consent to a caution and that the case is one for which, given its presumed level of seriousness, a caution is deemed appropriate. The police decision to caution and the manner by which the official pre-conditions are met to allow for this disposal outcome, are not subject to external review, challenge or appeal (Sanders, 1988, 1997 & McConville, et al, 1991). Accordingly, 'the police, as the cautioning institution, assume the ... separate functions of arresting ... judging and sentencing.' (Brogden, Jefferson and Walklate, 1988, p. 111).

A formal caution has serious consequences for the suspect. It is an official finding of guilt in respect of a criminal offence and as such is a form of administrative conviction. Once cautioned, an individual's biographic details, together with details of the offence for which a caution was administered, will be recorded on official police indices and on the Police National Computer (PNC). These records, which can be used as intelligence for the purposes of future police surveillance and targeting (tagging and flagging), also impact upon police case disposal decision making in circumstances where the suspected individual is arrested again. Those who have received cautions in the past are unlikely to do so again, this should be particularly the case following the introduction of the 1994 cautioning guidelines that stated 'Multiple cautioning brings this disposal into disrepute.' (Home Office, 1994). As such, those who are on record as previously cautioned can expect the police to elect for prosecution in subsequent cases. Furthermore, records of cautions may be disclosed to prospective employers for certain professions including those involving work with vulnerable adults and work with children, a caution record could thus have direct career implications for certain individuals. Of even greatest significance perhaps, is the fact that a formal caution will be cited at court should the person be convicted of a future offence and this will influence the judge's decisions concerning sentencing.

A formal caution is a serious matter. It is recorded by the police; it may influence them in their decision whether or not to institute proceedings if the person should offend again; and it may be cited in any subsequent court proceedings. (Home Office, 1990)

The outcome of any case in which a person has been arrested and brought to the police station for an arrestable offence should be a matter for justice. The application of the criminal law and the determination of guilt or innocence, together with the administration of legal sanctions, should be just and in accordance with due process. The evidence in a case must be tested for adequacy and accuracy through a judicial and juridical system of adversarial trial. It is only

through such a system of justice that the safeguards of due process can be secured; a fair trial; rigorous testing of the prosecution case enabling proof beyond reasonable doubt; full consideration of legal defences; the presumption of innocence and judgement by ones peers.

Cases, which are dealt with by the administering of formal police cautioning, do not conform to this system of justice and as a consequence are not subject to the checks and balances such a system offers. The evidence in cautioned cases is never tested at trial, questions as to the accuracy and adequacy of the facts of these cases, together with the determination of the guilt or innocence of those involved, rests solely with the police. As such, cautions are by their very nature, extra judicial (Enright, 1993) and extra juridical, what Lee (1995, p.315) terms 'pre-court justice'. There is no opportunity for external review, (judicial or otherwise) no right of appeal and thus no accountability. Accordingly, it must be a question of the gravest importance as to whether formal adult cautions can be considered just.

The official objectives of cautioning

The official objectives of formal cautioning are set out in Home Office circular 59/1990 as follows:

Aims

The purpose of a formal caution is

- To deal quickly and simply with less serious offences
- To divert them from the criminal courts
- To reduce the chances of their re-offending. (Home Office, 1990)

The stress upon cautioning as a diversionary strategy, which, by keeping offenders out of the courts, reduces their chances of re-offending, flows from an acknowledgement of the workings out and workings through of labelling theory. This theory warns of the potentially stigmatising effects upon the individual of 'criminal', 'deviant' or 'offender' labels assigned to suspects on entry into and progress through the criminal justice system (Becker, 1973). 'Traditionally the use of cautions has ... been justified on the grounds that it keeps (suspects) out of the criminal courts, thereby avoiding their being labelled as delinquent by themselves, their peer group and society at large.' (Enright, 1993, p.446). The attachment of stigmatising labels by 'those who have the power to apply them and make them stick' (Becker, *Op Cit.*) is argued to be a self-fulfilling prophecy in that offenders go on to internalise these deviant conceptions of self and orient their future behaviours accordingly, thus assuming and reifying an 'offender self' through deviant forms of future social action and interaction. If '... prosecution and punishment can exaggerate criminal self identity.' (Sanders, 1997, p.1071) then diversion away from the damaging effects of insertion into the criminal justice system is seen as a way of avoiding such labelling and its harmful after effects.

The benevolence of diversion

It should also be noted however, that whilst diversionary rhetoric is based upon assumptions of the 'benevolence' (Sampson, *et al.* 1988), of the 'soft machine' (Cohen, 1985) of de-institutionalized and administrative based justice for the suspect, cautioning at one and the same time represents diversion away from those due process safeguards that are presupposed to underpin and infuse the court system and the activities of its agents.

Critics question the benevolent assumptions of diversionary case disposals arguing that at best they represent an extension of legal rational activity through the pursuit of administrative, performative and financial expediency - key components of a crime control agenda (Packer, 1969) or at worst, can be understood as the relentless expansion of criminalising opportunities available to law enforcement agents (McConville *et al* 1991, Sanders, 1994, 1997), opportunities that serve to 'widen the net' of state intervention and expand its social control remit. (Foucault, 1977, Cohen 1985, Brogden *et al* 1988). Thus, the caution becomes either a means by which police pursue managerial aims and objectives such as; increased efficiency; enhanced arrest and clear-up rates; cheaper offender processing and lower staff costs through reduced requirements for court attendance (crime control objectives) at the expense of the suspect's due process rights, *or* the caution becomes an *additional* case disposal resource that allows the police to divert suspects away from lower level and non-consequential disposals such as informal warnings or taking no further action (NFA) just as much as it diverts offenders away from the criminal justice system itself.

The extent of formal adult cautioning

Since its official recognition as a formal case disposal strategy back in 1985 cautioning rates have risen significantly (as can be seen from fig.1 and fig.2 below). In 1996 (just over a decade after its introduction) cautioning rates for adult males aged 18 and over were approximately 30%, as compared to just 5% in 1985. For females (within the same age band) cautioning rates were approximately 46%, up from 14% (on average) in 1985 - this is as a percentage of all those found guilty or cautioned for indictable offences, based on 1996 figures, the time I conducted my field research. It is important to realise that this represents over 100,000 adult suspects whose cases are dealt with by the police through formal adult cautioning procedures outside of the court system every year.

Police monitoring of the perceived ethnicity of the people they arrest did not become mandatory until April 1999. Up until this time, collection of this data was at best patchy across the police forces of England and Wales and within the Metropolitan Police area it was effectively non-existent at an organisational level. The official statistics on cautioning published by the Home Office within the yearly criminal statistics bulletin for England and Wales breaks down cautioning figures by gender, age, force area and offence type.

Ethnic monitoring within cautioning statistics is now provided for by the Home Office 'Statistics on Race and the Criminal Justice System.' The 1999 bulletin shows that the percentage of arrests that resulted in a caution for notifiable offences (those for which fingerprints can be taken) was on average 14.3%. Cautioning rates are typically calculated as a percentage of all those offenders found guilty or cautioned for indictable offences, however, ethnic monitoring of cautioning rates has adopted a different measure and these statistics instead examine offenders cautioned as a percentage of all those arrested for notifiable offences. This figure is lower than that for cautions as a percentage of offenders found guilty or cautioned as (a) it encompasses a wider range of offences and (b) it does not take into account those offenders acquitted following trial.

When compared to the national average cautioning rate of 14.3%, those offenders described by police as black had a cautioning rate of only 11.9%, significantly lower than their white counterparts. Of those offenders described within official records as Asian 13.9% received cautions, still below the national average. These inconsistencies on the grounds of ethnicity are more marked within the Metropolitan Police Service where 17.5% of those described on arrest as white were dealt with by formal caution as compared with 14.1% for black offenders (Home Office, 1999, p.31).

Unfortunately, no corresponding analysis is provided for case disposal by ethnicity where the outcome was that police chose to take no further action

(NFA). As such we are left unsure as to whether these highlighted discrepancies arose because a greater number of black and Asian offenders were charged and prosecuted as opposed to being cautioned and released, or whether those same black and Asian offenders were in fact released without further action rather than being cautioned. But the Home Office acknowledge that there is ‘ ... a lower cautioning rate for suspected black offenders than for both white and Asian offenders. Variations in the use of cautions may reflect ethnic differences in the following: whether it was a first offence, the seriousness of the offence, the admission of guilt, whether the police officer perceived the offender as showing remorse as well as local cautioning policy and practice.’ (Home Office, 1998, p.20). Of critical importance here is the manner in which these variables become operationalised during the course of officer-suspect encounters within the police station. (See below for hypotheses concerning the impact on cautioning decision making of both the meaning of the suspect and the meaning of the offence.)

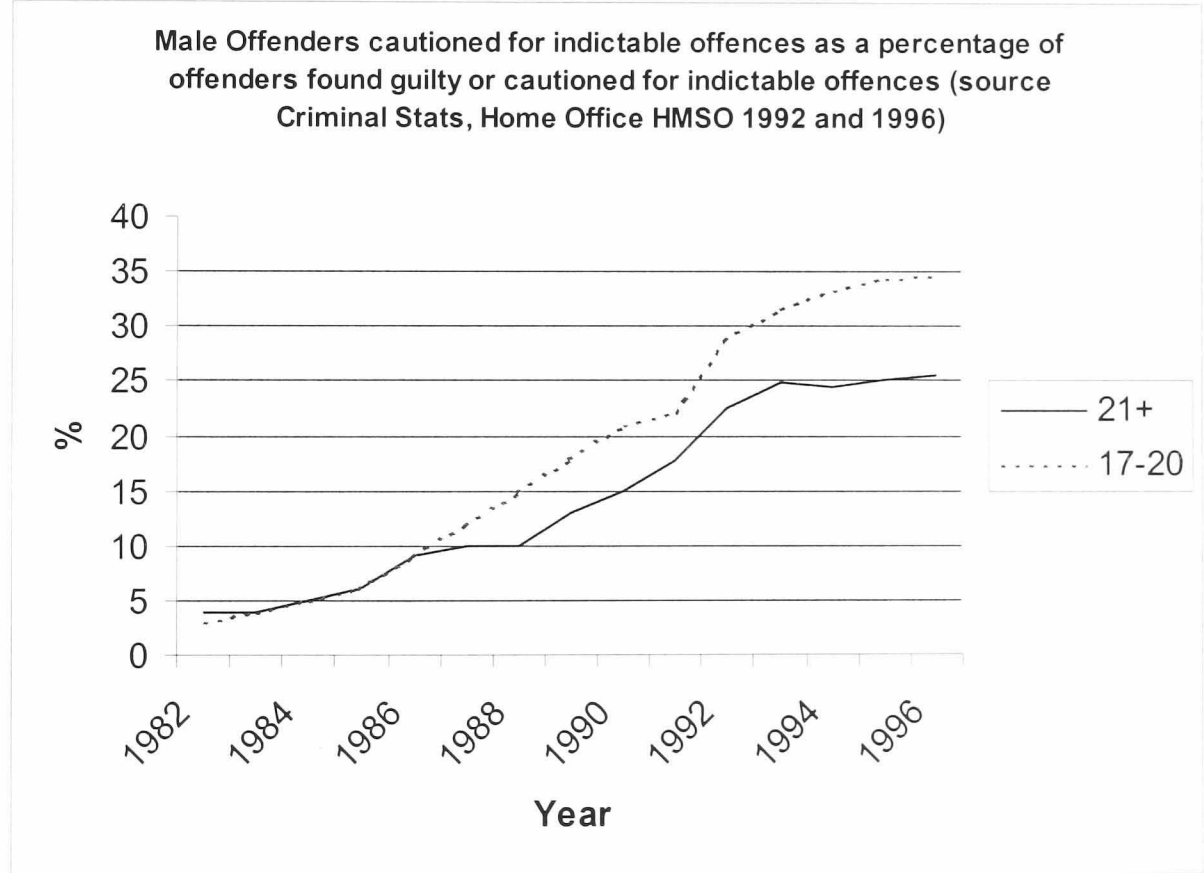


Fig.1.

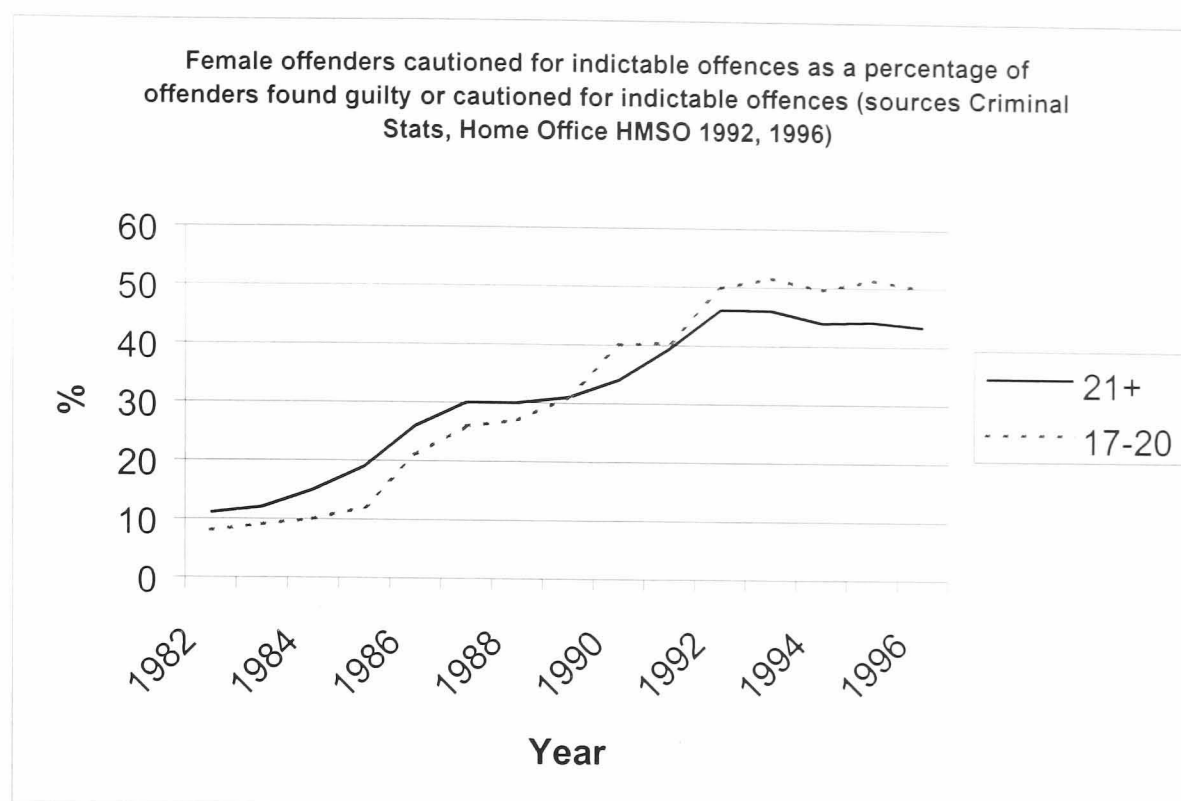


Fig.2.

The question of inconsistency

Whilst police use of formal cautions has been rising, so too has *official* anxiety about the way cautions are being administered by the police, an anxiety borne out of evidence of widespread inconsistency. Three main concerns are particularly evident in current discussion on the subject; (1) That there is wide discrepancy across police force areas (and even *within* the larger metropolitan forces) in the **numbers** of cautions given (2) That some offenders are being given **multiple cautions** inappropriately and (3) That there is a wide discrepancy between police areas in the **types** of offences for which police are prepared to administer cautions.

General fairness and consistency in prosecution policy, with which the Royal Commission was particularly concerned, would seem to require that as far as is practicable, offenders in similar circumstances should be dealt with in accordance with a similar

policy throughout the country. The cautioning rates suggest that this is not happening. (Home Office, 1984, P.6)

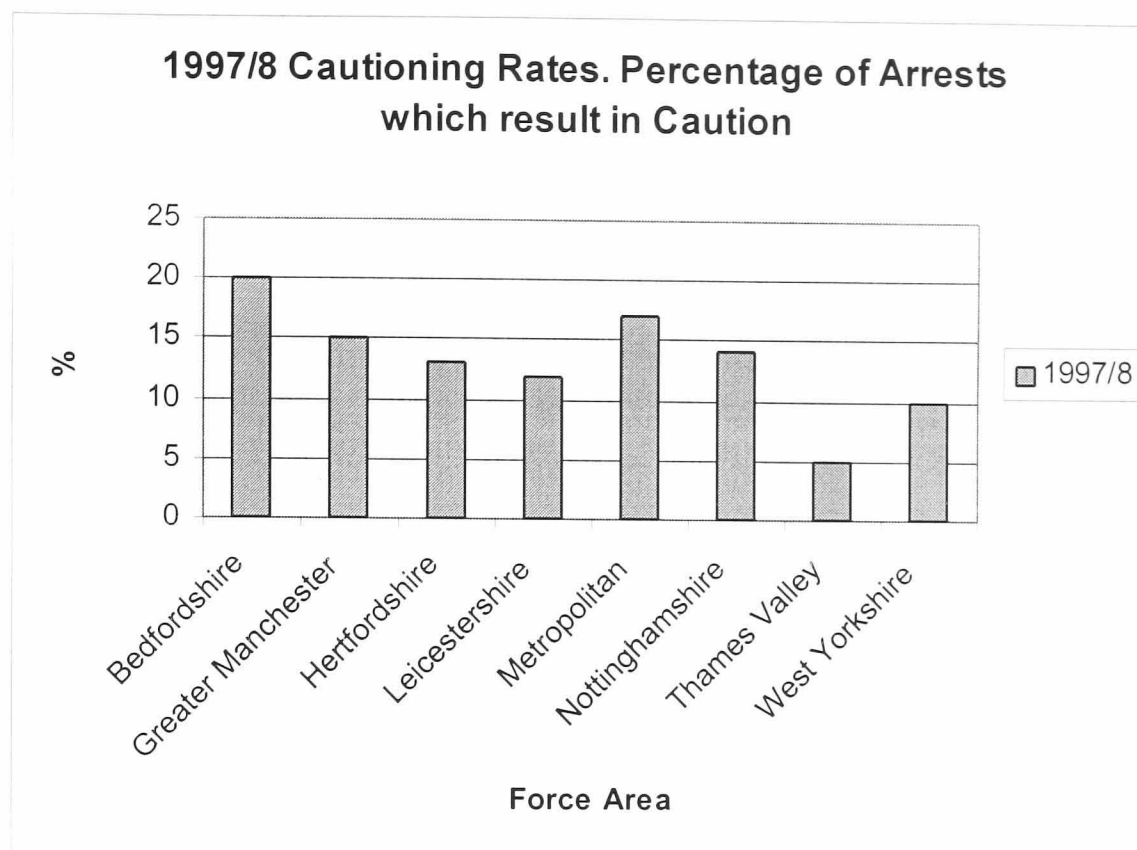


Fig.3. (Source Home Office, 1998)

Figure 3 above shows significant discrepancies in cautioning rates between different force areas, despite the fact that each is required to adhere to a national set of cautioning guidelines and standards. Thames Valley Constabulary for example, has the lowest cautioning rate at 5%, as a total of all persons arrested, a rate that is 75% lower than Bedfordshire Constabulary who caution 20% of all the offenders they arrest for indictable offences (these are offences which can be tried before a judge and jury at Crown Court as opposed to being dealt with summarily before a magistrates court). This large difference would be difficult to explain on the basis of differing offence profiles between the two force areas.

In 1997 the Home office stated that the national cautioning picture was marked by 'significant differences between forces' (Home Office 1997) particularly with regard to the issue of repeat cautions, i.e. in cases where the suspect had already been given a caution. Inconsistencies in the administration of cautioning can lead

to 'geographical justice' (McConville et al, 1991, Sanders, 1994) and 'inequity' (Evans and Wilkinson, 1990) with suspects significantly more likely to be prosecuted (or cautioned) in one force area than another. Indeed, the Home Office has admitted that inconsistency is apparent not only between forces but also in some circumstances *within* the same force area.

These inconsistencies have seemingly perplexed the government. Given that each force area is working to the same set of guidelines how can some forces give multiple cautions for offences such as theft, burglary and possession of soft drugs whilst others administer very few in these offence areas? How can the situation arise that offences as grave as suspected rape, and conspiracy to rob attract this diversionary strategy?

These concerns were brought into sharp focus by Michael Howard, then Home Secretary, in his address to the Conservative Party Conference in Brighton in 1993. In his speech he promised a 'tightening-up' of police cautioning guidelines with a view to overcoming these perceived inconsistencies. Since that conference, the Home Office has issued new guidelines to all police forces in England and Wales in the form of Circular 18/1994, the revised 'National Standards for Cautioning'. At the time of writing (November 2000) these remain the most current official guidelines for police on the administration of formal cautioning for both adult and juvenile suspects.

The cautioning of serious offences

The cautioning of increasingly serious offences has also raised concern amongst government, sociological and legal commentators. Sean Enright (a barrister) notes that: 'The practice of administering adult cautions has grown at an astonishing rate over the last 12-18 months. Furthermore, quite a startling range of offences are now being dealt with in this way; theft by shoplifting, public order offences, minor assaults, criminal damage (and) possession of controlled drugs' (Enright,

1993, p.446). A year after Enright wrote this, the Home Office itself was bemoaning and seeking to control the burgeoning police use of cautioning in increasingly inappropriate cases: 'Previous guidance discouraged the use of cautioning for the most serious offences, especially for those triable only on indictment. Statistics indicate, however, that cautions are administered in such cases – there were 1735 in 1992. Cautions have been given for crimes as serious as attempted murder and rape: this undermines the credibility of this disposal.' (Home Office, 1994). Despite such official attempts to eradicate cautions for serious offences, three years later in 1997 the Home Office had to report that '..research shows that only six police forces would not, under any circumstances, caution someone for a serious indictable offence. The other forces said they would take precise circumstances of the offence into account before deciding on whether to caution someone.' (Home Office 1997).

The relationship between cautioning rules and police cautioning practice

As an ongoing response to these perceived flaws in the equitable and consistent administration of formal cautioning by the police, there have been numerous official attempts to define and redefine the acceptable limits of police cautioning practice by the Home Office, who have issued a series of internal circulars to chief police officers in 1983, 1985, 1990, 1993 and 1994. Each version has sought, through recourse to increasingly legal discourse and rhetorical devices (see chapter 5), to manage and boundary police decision-making, to fetter discretion and reign-in the escalating extra-judicial power of the police through a process of rule tightening. But attempts to re-cast cautioning guidelines presuppose that those guidelines drive police case disposal action and preface the decision-making that underpins it. But as McConville, Sanders and Leng so astutely observe: 'Prosecution guidelines seem to envisage a hierarchical structure of thinking – is this an offence? is there evidence? is there any need to prosecute? is the suspect suitable for a caution? This might be the thought process of a detached decision maker, but not that of an involved one...Official guidelines

may seem to demand reasons but they are too remote to infuse 'routine' decision making.' (McConville, Sanders & Leng, 1991, pp. 112-3)

This is so because, at the level of 'routine decision making', the cautioning process becomes manifest as decision-making activity only within a complex series of interlocking presentational, definitional and interpretational police activities through which officers are able to control and manage the very meanings that the offence, the suspect, the setting and the caution should hold for other actors on the cautioning stage. Through such control, officers are able to construct key elements of the case that serve as touchstones for decision-makers, mapping cases to those outcomes that best suit both individual and collective purposes. It is the interplay between these dimensions of presentation, interpretation and definition and the way in which these elements become aligned through symbolic interaction that shapes and drives police case disposal activity, the cautioning guidelines and the meaning they hold for officers are but one of several components of this fusion. Caution decisions do not exist as discrete outcomes, direct logical responses to guideline pre-requisites that can be located on a linear path of police action stretching back to arrest and stretching forward to release. Instead, caution decisions arise out of and find meaning only within the matrix of culturally derived meanings that coalesce to form the occupational culture of the police work-world. To understand how cautions come to be administered or withheld by officers within this culturally driven work-world it is necessary to capture their meaning-through-use for actors who deploy them as interactional resources. This is the central project of this thesis.

The police use of cautioning then, exists outside of the criminal justice system and is not threatened by external audit, analysis or review, whether by the courts, the Crown Prosecution Service (CPS), defence advocates or public bodies. It is controlled absolutely by the police themselves whilst being circumscribed by only superficial, non-prioritised and loosely defined guidelines, deviation from which carries no sanction. (See McConville *et al* 1989 & Dingwall & Harding, 1998). It is quick and cheap (requiring no lengthy and expensive court case or trial), supports

the demands of an increasingly managerial service for performance indicators of arrests and case 'clear-ups' and serves other instrumental ends such as bargaining (for the names of others connected with the crime, for the location of outstanding property, for details of other planned crime and other intelligence), as well as being a means to overcome weak evidence or to cover-up police malpractice. Moreover, by virtue of its internal and hidden nature and weak non-statutory base, it is vulnerable to becoming a natural extension of street-based culturally driven police decision-making activity, in which issues of seriousness and just deserts flow from the shared and taken-for-granted beliefs and assumptions of the central actors on the cautioning stage, police-work problems demanding police-work responses rather than juridical or judicial solutions.

Through the adoption and synthesis of dramaturgical, phenomenological and interactionist perspectives, this research project focuses on the key sociological and criminological issues arising from this problematic, in an effort to reveal the nature of current police cautioning practices within the arena of the police custody area, the crucible within which the prime elements of meaning, taken-for-granted assumption, action and symbolic setting become fused to form socially oriented decision-making action. Questions as to the extent to which official cautioning edicts are elements added to this mix, and at what stage, are central to this investigation.

The research project

Whilst cautioning as a case disposal mechanism is an under-researched area of police activity (worryingly so given its significance as case disposal mechanism and its impact upon the rights of individuals and the maintenance of due process), much of the research that does exist focuses upon juvenile cautioning (that is for suspects under 17 years of age). Juvenile cautioning has a longer history than its adult counterpart and is a method of case disposal that is extensively multiplexed with other 'external' multi-agency responses to youth offending (e.g. social services,

local education authority, and probation services). Adult cautioning, whilst subject to the same national standards and guidelines as that for juveniles, is not subject to the same extensive case monitoring and review contingencies. It is a less structured and formalised phenomena, requiring no adjudication from external case-work panels and as such is even more cut off from the outside world and thus even more hidden from view.

Within the limited sphere of existing social scientific research on adult cautioning, most investigation rests on examination of cautioning inconsistencies through quantitative analysis of officially produced statistics. There is currently no coherent body of extensive, thematic and structured qualitative research that examines the interplay between the cautioning guidelines and the sense-making and decision-making actions of the personnel they are designed to control within the very work-world in which cautions occur, the police custody office. None that adopt a dramaturgical or interactionist perspective with a view to discovering the very interactional processes involved in such case disposal decision-making. None that ask: 'what are the meanings of formal adult cautioning for the very officers who deploy it and how do these meanings impact upon and direct the ways in which formal adult cautioning becomes operationalised?' As McConville, & Sanders suggest: 'It is the *capacity* of the police to manipulate and violate rules which we regard as of primary sociological importance and not simply the (revealed) frequency with which they engage in such practices.' (1995, p.195). This research project seeks to answer these fundamental questions.

At its hub lies a two-year ethnographic study of adult cautioning as it is located and finds context and relevance within the working occupational culture of a busy North London police station. Through detailed covert participant observation of operational duty and the reception and processing of arrested suspects, I set out to explain how the meanings cautioning holds for officers becomes expressed through testimony, social interaction, negotiation, decision making and the language of control and coercion. The influence of structural determinants upon individual

social action has not been ignored, instead I have argued that they become translated through the social organisation of their use and are deployed as cultural resources by which individuals seek and obtain their individual and collective purposes-at-hand. The official national standards and guidelines on the administration of adult cautioning are a central case in point, and it is their translation through social action from a structural determinant to an interactional resource that is central to my research findings.

Hypotheses

Accordingly, the central hypothesis of this work is that it is the culturally derived and mediated means by which officers come to understand the meaning of adult cautioning that is the true motor of police case disposal decision-making in this area of police work. This culturally derived and mediated understanding of cautioning is dynamic, not static and is constantly created and recreated through the actions and interactions of the members of the cultural group, actions that include the decision to administer or withhold cautions. It is the absence of definitional specificity (exaggerated by the significant interpretational latitude arising from loosely defined wording within the cautioning guidelines) that I envisaged to be the central explanation as to the question of inconsistent application of cautioning both inter and intra-force.

From this central hypothesis, a number of specific hypothetical subsets are evident:

The meaning of the caution.

Variations and inconsistencies in the use of formal adult cautioning by police within the Metropolitan Police Service arise, despite the existence of detailed guidelines, because of the impact and influence on police decision-making of the differing attitudes held by significant actors within the cautioning process towards formal adult

cautioning and the way in which these attitudes become reified through action and interaction.

Associated hypotheses

- The readiness of significant actors within the formal adult cautioning process to administer formal adult cautions, is directly associated with the attitudes that each holds towards the formal cautioning of adult offenders by the police.
- The way that these significant actors go on to interpret the formal adult cautioning guidelines, is associated with their degree of readiness to administer formal adult cautions.
- Variations in the way that these significant actors interpret and apply the formal adult cautioning guidelines causes variations and inconsistencies in the overall administration of formal adult cautioning by the police across the Metropolitan Police District.

The meaning of the suspect

Variations and inconsistencies in the use of formal adult cautioning by police within the Metropolitan Police Service arise, despite the existence of detailed guidelines, because of the impact and influence on police case disposal decision-making of the differing attitudes held by significant actors within the cautioning process towards 'types-of-offenders' and the way in which these attitudes become reified through action and interaction.

Associated hypotheses

- Attitudes towards 'types-of-people' and 'types-of-offender' held by officers, impact on and influence their perceptions of the suitability of particular types of offenders for formal adult cautioning.
- Readiness to administer a formal adult caution against the offender will be influenced in part by how suitable for a formal adult caution the offender is perceived to be.

The meaning of the offence

Variations and inconsistencies in the use of formal adult cautioning by police within the Metropolitan Police Service arise, despite the existence of detailed guidelines, because of the impact and influence on police case disposal decision-making of the differing attitudes held by significant actors within the cautioning process towards 'types-of-offences' and their relative seriousness and the way in which these attitudes become reified through action and interaction

Associated hypotheses

- Attitudes towards the seriousness of offences held by significant actors within the formal adult cautioning process impact on and influence how suitable such offences are considered to be for cautioning.
- Readiness to administer a formal adult caution for a specific type of offence is associated with how serious the significant actor perceives that offence to be.

The meaning of the Crown Prosecution role and discontinuances

Variations and inconsistencies in the use of formal adult cautioning by police within the Metropolitan Police Service arise, despite the existence of detailed guidelines, because of the impact and influence on police case disposal decision-making of the differing attitudes held by significant actors within the cautioning process towards Crown Prosecution Service policy and practice in respect of case discontinuances and the way in which these attitudes become reified through action and interaction.

Associated hypotheses

- The level of concern held by significant actors within the formal adult cautioning process about Crown Prosecution Service (CPS) case discontinuances is directly associated with their general attitudes towards the Crown Prosecution Service.
- The use of formal adult cautions by these significant actors as a means of diverting cases away from the CPS procedure is associated with the level of concern such actors hold regarding CPS case discontinuance's.
- Readiness to administer a formal adult caution in a particular case is associated with a significant actor's readiness to utilise formal adult cautioning as a means of diversion from CPS procedure.

The remainder of this thesis sets out to test these hypotheses through consideration of relevant theory and through field-research and by so doing, to answer the central question of the inconsistencies apparent in the administration of a national system of formal adult cautions by the police. I intend to accomplish this task through a systematic review of cautioning literature and research, as well as relevant

sociological, phenomenological and criminological theory, a critical and reflexive examination of ethnographic methodology and the ethics of covert participant observation, a detailed and theoretically grounded analysis of data arising from fieldwork and finally a careful consideration of the implications of the research findings for future social policy.

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Chapter 2 – Official discourse and theoretical critique

Introduction to the review

Much has been written on the subject of the British Police by a variety of commentators and some of this work has been supported by research. A comprehensive analysis of the full range of this literature is beyond the scope of this review and, in any event, would add little to an understanding of the use of formal adult cautioning by the police.

Instead, I have attempted to focus on theories that have a direct bearing on the sense-making and decision-making activities of the police with regards to case disposal options and, in particular, those theories that have proven explanatory power in uncovering the often hidden social world of police decision makers. In addition, I have considered in detail, official guidance and policy on police cautioning and have attempted to chart its development from inception to the present day. Responses to the official literature, where these have proven insightful, have also been considered.

A distinction needs to be drawn at this early stage between literature that deals only with juvenile cautioning, (which, being the longest standing of all cautioning forms, has been the subject of the majority of sociological attention paid to police cautioning as a subject of interest and research), that which deals with the cautioning process in general, and literature that confines its focus to formal adult cautioning (of which, significantly, there is little). Whilst, officially, a uniform approach to the guidance of police cautioning of both adults and juveniles has both come and gone, the approach of the police to these two ‘client-groups’ has followed largely different paths, with juvenile cautioning often being characterised by a more considered multi-agency approach. Conversely, adult cautioning, the focus of this study, has remained firmly in the police domain. This has an impact on the literature reviewed and I have considered commentary on

juvenile cautioning only insofar as it proves illuminating in consideration of the police approach to cautioning as a case disposal mechanism in general and to adult cautioning in particular.

Any academic undertaking is necessarily underpinned by the theoretical position of the author and, whilst any theoretical position and the arguments that flow from it must be defended, I openly acknowledge that this review draws heavily upon phenomenological, ethnomethodological, dramaturgical and symbolic-interactional explanations of the cautioning process. The arguments for adopting such theoretical perspectives are dealt with at length during consideration of research methodology in another chapter, nonetheless, I would suggest that the application of 'broad' theory to the specifics of police cautioning within this review, serve to make explicit the appropriateness of this approach.

The review, which stretches over chapters 2 and 3, is structured into four broad categories, namely;

- The official guidelines.
- Phenomenological and dramaturgical perspectives.
- The police sub-culture
- Concluding comments

Each of the three main sections (excluding the concluding comments) in turn spawns a number of sub sections in an effort to divide the work up into more accessible themes. Despite this division, however, I would suggest that the review be considered as a coherent whole, with arguments being developed incrementally.

The official guidelines

The police use of discretion in prosecution decision making has a history stretching back to the days of the first 'Peelers' following the establishment of the Metropolitan Police in 1829 and has long been seen as a significant component of English law (see Banton, 1964 and Steer, 1970). The decision before the police has historically been that between prosecution and release without further action, 'it has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution.' (Home Office, 1983, Para 8). Where police did proceed with a prosecution, the suspect attended court and stood trial. In cases where police chose not to prosecute there were no further consequences for the suspect who, having endured police custody during arrest, was free to go about his business following release.

It was not until 1983 that such prosecution decision-making by the police became subject to external guidance and attempted constraint, intervention that had its roots in the findings of the 1981 Royal Commission on Criminal Proceedings concerning inconsistent prosecution practices, and which took the form of the Attorney General's Guidelines on prosecution decision-making as contained within Home Office Circular 26 of 1983. This important document provided the police with a set of criteria for prosecution, criteria that were to foreshadow and underpin subsequent thinking on a formalised system of police cautioning for both juvenile and adult offenders.

The criteria for prosecution contained within the Attorney General's Guidelines required that police consider the level and sufficiency of evidence in criminal cases before deciding whether or not to pursue a prosecution, applying a test 'of whether there is a reasonable prospect of conviction, or put another way, whether a conviction is more likely than an acquittal before an impartial jury properly directed in accordance with the law.' (Home Office, 1983, Para 4). Where evidence of an offender's guilt was more likely to result in an acquittal than a

conviction, a prosecution should not be pursued. In addition to this requirement for evidential sufficiency were public interest and other criteria that required the police to consider factors including likely penalty on conviction, the staleness of the crime, the age and nature of the offender, the attitude of the complainant and the seriousness of the act, as can be seen from this extract from the 1983 guidelines:

The factors which can properly lead to a decision not to prosecute will vary from case to case, but broadly speaking, the graver the offence, the less likelihood there will be that the public interest will allow of a disposal less than prosecution. The most common factors...are:- Public interest...Likely penalty...Youth...Old age and infirmity...Attitude of the complainant...the good or bad character of the accused...(and) the prevalence (or otherwise) of the particular offence in the area. (Home Office, 1983, Para's 8-10).

It should be noted that whilst the Attorney General's guidelines on prosecution decision-making proved to be the major progenitor of subsequent cautioning guidelines, they contained no provision for official diversionary strategies. Instead, they pre-supposed that if, having duly considered the criteria for prosecution, the police chose not to proceed with prosecution in a given case the arrested person would be released from custody without recourse to further police action.

By 1983 formal cautioning was nonetheless an established, though not regulated, case disposal option for the police, although predominantly as a mechanism for diverting juvenile offenders (i.e. those under 17 years of age) from prosecution (see McClintock & Avinson, 1968 and Bottoms *et al* , 1970). Formal cautioning for adults at this time was a comparatively rare case disposal option restricted largely to cases of drunkenness. This was about to change.

In June 1984 the Home Office, responding to concerns raised by the 1981 Royal Commission on Criminal Proceedings about inconsistent juvenile cautioning practices, and building upon the 'criteria for prosecution' contained within the 'Attorney General's Guidelines' on prosecution decision-making, issued a consultative document entitled 'Cautioning by the Police'. This document set out a formalised system for the cautioning of both juvenile and adult offenders by the police, including guidelines for its consistent and appropriate application. This consultative document served two main purposes. First, it sought to provide suggested wording for a set of national cautioning guidelines that would be both a refinement of and an extension to the Attorney General's guidelines on prosecution decision-making. Second, it sought to forewarn police policy makers of the perceived consequences of failing to adhere to the guidelines on cautioning. Of central concern in this regard was the problem of both inter-force and intra-force disparity (see Evans and Wilkinson, 1990 for research on intra-force disparity in cautioning).

General fairness and consistency in prosecution policy, with which the Royal Commission was particularly concerned, would seem to require that as far as is practicable, offenders in similar circumstances should be dealt with in accordance with a similar policy throughout the country. The cautioning rates suggest that this is not happening. (Home Office, 1984, p.6)

In addition to these concerns over the effects on fairness and justice of wide disparities in juvenile cautioning rates, the consultative document also expressed official fears regarding its potential for 'net-widening'. The police were provided with a mechanism by which suspects who would hitherto have been released without further action or informal words of advice, might now be dealt with by way of caution 'There is some evidence that the increase in cautioning associated with the Children and Young Persons Act 1969 was caused not only by the

greater use of cautioning in respect of juveniles who would otherwise have been prosecuted, but also by the use of cautioning in respect of juveniles who would otherwise have been neither cautioned nor prosecuted.’ (Home Office, 1984, pp.11 & 27 and Cohen, 1990). The consultative document also raised concerns over the potential of cautioning to allow the police to take on the functions of the courts. (Home Office, 1984, p.12). Generally, however, the document provided an upbeat and positive description of both existing and future cautioning arrangements, talking of ‘advantages for courts in the efficiency with which they may operate...for the prison service ... the wider use of cautioning may offer some relief. Finally, there are implications for the police service...lead(ing) to an enhancement of public confidence in the way the criminal law is applied’ (Home Office, 1984, p.12).

Recommendations contained within the consultative document soon found their way into a formalised set of cautioning guidelines distributed as Home Office circular 14/1985. The 1985 circular, simply entitled ‘The Cautioning of Offenders’ is significant for being the first official general guidance on the cautioning of adult offenders. Its contents largely mirror the consultative document that preceded it, including the former’s explicit concerns about ‘disparity’ and ‘net widening’, acknowledging that a formal caution brings the offender ‘within the fringes of the criminal justice system’ (Home Office, 1985, p.2) an interesting dilemma for a method of case disposal intended to divert the offender from the criminal justice system with its associated problems of labelling and stigmatisation (Becker, 1973)

The Attorney General’s guidelines on criteria for prosecution, issued to chief officers in February 1983, endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution. In general, prosecution should only take place where there is sufficient evidence to support a prosecution and the public interest requires it. Where there is sufficient

evidence, but the public interest does not require prosecution, a formal caution may well be appropriate. But unlike the case of juveniles, there is no general presumption that cautioning will be the normal course. (Home Office, 1985)

The 1985 guidelines provided, for the first time, explicit cautioning criteria to police in respect of both juvenile (those under 17yrs) and adult offenders. These two categories of arrested person were dealt with separately within the document (a situation that was to be abandoned in subsequent versions) the most significant difference being a general presumption in favour of cautioning juvenile offenders. Criteria such as those requiring sufficiency of evidence and consideration of what was in the public interest, first introduced by the Attorney General's guidelines on prosecution decision making back in 1983, remained central determining factors, with additional emphasis being placed on requirements for the establishment of guilt, the securing of an open admission concerning the offence and the obtaining of informed consent from the suspect to proceed by way of caution.

Over the course of the next decade and beyond, these new cautioning provisions redrew the case disposal map in England and Wales; adult cautioning rates for male offenders from the year of its introduction as a formalised case disposal process in 1985 through to 1996 grew from 5% to 30% and for adult female offenders from 11% to 46% over the same period. These figures represent cautioning rates as a percentage of all persons arrested by the police for indictable offences, that is those offences triable at crown court before a judge and jury. (Figures Home Office 1997 & 1998)

But the burgeoning use of cautioning was to prove a volatile political issue (a matter examined later in this chapter) and one that was to provide impetus for research into the cautioning policies and practices of different force areas. One of the main concerns was that increased cautioning rates arose in part from repeat

cautioning, a provision that had received favourable consideration within the 1985 cautioning guidelines:

The fact of a previous caution or conviction does not remove the possibility of a course of action other than prosecution in respect of a current offence, especially where the offence in question is trivial or of a different character to the earlier offence, or where the earlier offence was trivial, or where there has been a reasonable lapse of time since the previous decision. (Home Office, 1985, Section II, Para. 6)

One of the main aims of both the consultative document on cautioning and the national cautioning guidelines that it spawned was to overcome the inconsistencies in prosecution decision-making so criticised by the Royal Commission on Criminal procedure back in 1981: ‘The immediate spur to our work has been the Report of the Royal Commission on Criminal Procedure, which drew attention to disparities in cautioning rates as illustration of inconsistencies in prosecution practices. The Royal Commission recommended that steps be taken to promote more consistent practices.’ (Home Office, 1984, 1.4). However, subsequent Home Office research published in 1990 into the effects of the 1985 guidelines on inter-force consistency concluded that, ‘The circular appears to have had little success in promoting greater consistency. Large variations in cautioning rates between forces remain and these cannot be explained solely by differences in local circumstances. Moreover, variations within forces were as great as variations between forces’ (Home Office, 1990, Annex A *Emphasis is original*). No explanations for these ‘large (inter and intra-force) variations in cautioning rates’ is offered however, but it becomes clear that, when changes to the criteria contained within the 1990 guidelines (spawned by this research) are examined, the immense interpretational and decision-making leeway and autonomy vested in the police by the guidelines is not considered contributory. In fact this latitude and autonomy, far from being questioned,

actually becomes extended with the inclusion in the 1990 guidelines of a new criterion, namely that police consider the offender's 'attitude towards the offence, including practical expressions of regret' (Home Office, 1990, p.8).

The significance of this new criterion cannot be overstated as, along with existent nebulous and undefined criteria such as offence seriousness, there was (and still is) no provision for a definition as to what may or may not amount to an appropriate attitude towards the offence sufficient for a caution to be either ruled-in or ruled-out. These extra-legal tests provide police decision makers with clear means to construct explanations of cautioning decisions that will always concur with the vague precepts of cautioning. If a surly, uncommunicative or difficult suspect becomes charged, despite signs of genuine remorse and an open admission concerning an otherwise cautionable offence, it clearly proves unproblematic for the appropriate officer to validate his/her decision not to caution by arguing that the offender's attitude was, in their view, inappropriate.

The official guidelines contain several different criteria, set out in no order of priority. Many cases contain some elements which are favourable to caution and others which are not. This makes it easy to justify any decision, and to dismiss any alternative. Thus whether drunks are prosecuted or not can depend on the individual's sexuality or demeanour, yet any decision can be justified by 'legitimate' criteria. The same is true of, for instance, 'seriousness'. (McConville *et al* 1991, p.123)

It should be noted at this juncture, that the extension or with-holding of a caution on grounds such as the prevalence of an offence within a given geographic area or the attitude of the offender towards the offence (a cautioning criteria introduced by the 1990 cautioning guidelines) creates a significant separating-out of the offender from the offence and begins to deal with each in isolation of the other. Accordingly, this form of decision making, in contrast to judicial forms of justice,

utilises extra-legal tests for the purpose of establishing desert. Criminal trials do not, unlike cautioning, turn upon the level of remorse shown or other attitudinal criteria exhibited by the defendant, nor do they quantify or categorise the offence in terms of its locational significance, I will return to this issue later.

Tracing the development of the guidelines on cautioning it becomes clear that they are predicated on the assumptions that they provide a framework for and therefore boundary and shape police cautioning activity, and that problems which may (and indeed have) come to pass, are due to and can be rectified by the wording of the guidelines themselves. The 1985, 1990 and 1994 cautioning rules are then all attempts to; tighten-up cautioning; clear-up misconceptions and ambiguity for the practitioner contained within a previous version and either broaden the use of cautioning (as was the case with the 1990 guidelines) or narrow its use (as was the case with the 1994 guidelines) measures that Baldwin describes as an:

XR3 approach to processes...(an assumption that they) can be improved by adding ever more legalistic trimmings and accessories. (Baldwin, 1985, p.22)

Unsurprisingly, it has been political and populist rather than justice-reform concerns that have historically shaped cautioning rules, particularly those of adults. For a Home Secretary seeking to get tough on crime and look tough on the podium at the party conference, Michael Howard promised to tackle the 'cautioning as a soft-option' cries of the right by halting in its tracks the perceived fiasco of both multiple cautions and cautioning for serious offences.

I share the widespread public concern about the inappropriate use of cautions. Repeated cautions send completely the wrong signal to offenders... I do not expect offences such as serious burglaries and violent crimes to be dealt with by a caution.. People who commit

crime (should not) expect to be given a second chance. (Howard, 1993)

The Home Secretary's stance on cautioning led initially to an interim paper, Home Office News Release 246/93 and subsequently to the 1994 revised guidelines and national standards on cautioning contained within Home Office Circular 18/1994 which remain current to this day.

The new guidelines opened with this paragraph:

Previous guidance discouraged the use of cautioning for the most serious offences.... statistics indicate however, that cautions are administered in such cases...this undermines the credibility of this disposal. Cautions should never be used for the most serious indictable-only offences. (Also) ... Research into a sample of offenders who were cautioned in 1991 indicates that 8 per cent had already received two or more cautions. Multiple cautioning brings this disposal into disrepute. (Home Office, 1994, Para's 5 & 8)

In many key respects the 1994 cautioning guidelines, supposedly the means by which the Home Office provided the teeth for the Home Secretary's conference promises, represented a 'more-of-the-same' approach to the unresolved issue of cautioning disparity, accepted as undesirable, seen as significant and admitted to be an increasing problem. This is despite the ineffectiveness of previous incarnations of the guidelines in shaping and controlling police case disposal activity and reducing inter and intra-force disparity.

Amongst the available cautioning literature, an article by Enright (S. Enright, 1993) for the New Law Journal, perhaps best envelops the range of concerns with which formal adult cautioning is currently regarded. He begins his article by

highlighting the dramatic increase in cautioning rates nationally during the 12-18 months preceding his 1993 article, examining the potential 'knock-on' effects of increased cautioning for the courts:

There is, as yet, no published research on the application of the new guidelines (Home Office guidelines on cautioning circulated in 1990) but there is other compelling evidence that adult cautions, once rare, are now extremely common-place. This is the experience of court clerks, police officers and criminal practitioners. Further evidence of this practice can be gleaned from the state of the magistrates courts' lists in central London, which have shrunk to an astonishing extent. Only a year ago it was common for morning lists at Clerkenwell and Bow Street to spill over into the afternoon, now lists are often dealt with by mid-morning. (Enright, 1993, p.446).

Such marked reductions in court case-loads become, I would argue, a significant indicator of a weakening of due-process, a consequence of increased diversion through formal cautioning which Bartlett describes as 'extra-judicial justice ... (where) crimes are committed over which the courts have no jurisdiction because the police decide to take no further action other than to warn the offender not to do it again.' (Bartle, 1990, p.1494). I shall consider the question of extra-judicial justice and the subordination of due-process in greater detail in a later chapter.

Seeking explanation for this significant increase in the police use of formal adult cautioning, Enright accurately identifies two fundamental causes; *pervasiveness*; cautioning permeates new layers of offence type, and *expediency*; cautioning becomes an instrument of police management activity. With regard to the question of increased use or penetration of cautioning he suggests that 'The caution is being used as an alternative to prosecution for a much more serious

range of offences...burglary (and) possession of heroin or cocaine might be an example' (Enright, 1993, p.447).

Findings from my own research strengthen the view that offences which, hitherto, had been regarded by police as too serious to caution, are increasingly considered suitable for cautioning. By way of example, I have data of cases involving assault with an imitation firearm, possession of ammonia with intent to injure and the aggravated theft of a motor vehicle (aggravated in the sense that its taking was with a view to using it to cause damage and/or physical injury to persons). In all these cases a formal adult caution was considered and administered.

The impact of the cautioning guidelines on police decision making

The pervasive nature of formal adult cautioning could be explained as a manifestation of the extension of police decision-making activity that is only loosely framed by, and extends well beyond, the intention of official cautioning guidelines, where 'arresting officers (have the) capacity to construct cases (in ways which) help them get their own way' (Sanders, 1988, PP.520-1) and do so increasingly and with regard to an increasing range of offences. For as Laycock & Tarling state; 'it has often been suggested that the initial procedure adopted by the police once a suspect has been apprehended influences his chances of eventually being cautioned.' (Laycock & Tarling, 1985, P.61).

Conversely, academics such as Westwood cite the inflexible nature of the Home Office cautioning guidelines and their interpretation and expansion through the formulation of local police policy arrangements as the reason for this expansion:

Increasingly, people who have admitted serious offences are being cautioned by the police, either as a result of inflexible force guidelines or under pressure from the Crown Prosecution Service...The 1990 circular has made matters much worse. It is

time to rewrite the cautioning rules set-out in Home Office circular 59/1990...to give front-line officers and their immediate supervisors the duty to consider the factors for and against prosecution and decide accordingly. (Westwood, 1993, pp.24-5).

In stark contrast to the position of Sanders & Young (1994), McConville, *et al* (1991) and Laycock & Tarling (1985), this theoretical position casts the police actors upon the cautioning stage not as influential decision shapers but as slavish adherents to 'edict-like' guidelines who, by following the letter of the cautioning rules, create problems not of their own making, problems that are therefore endemic of badly formulated guidelines and poorly thought through local cautioning policies. As such, an upwardly spiralling system of cautioning that captures ever more serious offences can be resolved by loosening, not tightening, cautioning directives and by increased, not decreased, decision-making flexibility and discretion.

Concerns that administering an adult caution in cases involving serious offences would threaten the credibility of the system and lead to questioning of the trust placed in the police to exercise discretion 'appropriately', led (as I have argued above) to the publication of the 1994 guidelines in March of that year. Home Office research underpinning these concerns, revealed 'there were 1735 (serious cases cautioned) in 1992. Cautions have been given for crimes as serious as attempted murder and rape; this undermines the credibility of this disposal.' (Home Office, 1994, Section 5).

From the Westwood/Home Office standpoint, cautioning guidelines precede, shape and constrain police decision-making activity. For Westwood, the answer to increased and inappropriate cautioning flows from a loosening of procedures by which the decision to caution is arrived at and a blurring of definitions and categories contained within the guidelines, thereby extending trust in 'frontline officers and supervisors' who will, as a result, make professional judgements on

each individual case. For the Home Office, the solution is arrived at from a diametrically opposite standpoint, contingent upon a tightening of guideline wording and clarification of the limits that are to be placed on police decision-making within the cautioning arena. The problem with this viewpoint is that:

The domain of presumed jurisdiction of a legal rule is open ended. While there may be a core of clarity about its application, this core is always and necessarily surrounded by uncertainty, no matter how far we descend on the hierarchy of more and more detailed formal instruction, there will always remain a step further down to go, and no measure of effort will ever succeed in eliminating, or even meaningfully curtailing, the area of discretionary freedom of the agent whose duty it is to fit rules to cases. (Bittner, 1975)

Bittner makes a crucial point when he suggests that attempts to curtail discretion through increased rigidity of textual edicts fails to recognise their reification through translation from 'rules to cases' in myriad circumstances. This may in part explain the reluctance of the Home Office to provide a more detailed definition of 'seriousness' or an associated taxonomy of serious cases against which officers could judge the prudence of their own cautioning decisions in specific cases. But what then results is more akin to Westwood's position, that we trust in individual officers to make just and equitable disposal decisions circumscribed by loosely worded cautioning guidance. All of this presupposes, of course, a relationship between rule-maker and rule-follower in which rules imbue action and decision, a position that is not certainly not accepted by Sanders, Evans and Wilkinson as can be seen from the quotes below.

The practical arrangements for cautioning are vague (how serious an offence or record? What kinds of personal circumstances should be taken into account?), manipulable (the police themselves influence the wishes of the victim: Edwards, 1989, Ericson, 1981)

and non-prioritised (are victims wishes, suspects circumstances or offence seriousness to predominate? Both on the street and in the station rules have little effect on police behaviour unless they are both enforceable and enforced (neither applying to cautioning). (Sanders, 1994, p.797)

Circular 14/1985 (Home Office Guidelines on Cautioning) focuses on variations between forces whereas we think that the attention of Chief Constables should be drawn to our evidence concerning intra as well as inter-force variations in policy and practice. (Evans & Wilkinson, 1990, p.173)

Circular 59/90 aimed to ensure that forces comply with national standards for cautioning applicable to juveniles and adults alike but there is little evidence to suggest that this has been achieved. (Evans, 1994, p.566)

From the theoretical position afforded by the work of Sanders and Evans and Wilkinson, such problems that accrue as a consequence of the increased disparity in the application of cautioning and its increased pervasiveness arise not from flawed guidelines which are either too rigid (Westwood) or too loose (Home Office) but from forces and the individual practitioners within them not following or applying the directives in the first place.

In the work of Sanders particularly, there exists a stark contrast in perspective to that already described in Westwood's work. For Sanders the guidelines aren't excessively rigid and constraining but vague, malleable and non-prioritised, affording individual officers a high degree of interpretational latitude which becomes compounded by the fact that because 'the guidelines are ineffective

when their application is subject to no incentive or sanction' (Sanders, 1988, p.524) they are disregarded or become subordinated in favour of other policing goals, be they individual, sub-cultural or organisational.

The similarity between these findings (stemming from Sander's own research between 1980-1985) and those of Steer (1970), ten-to-fifteen years earlier, is striking. Police practices appear to be little changed by attempts to control them in that period and so there is little reason to believe that yet more elaborate future guidelines will make any difference to police practice either. (Sanders, 1988, p.516)

This perception of stasis is further re-enforced by Evans and Ellis (1997) in their paper 'Police Cautioning in the 1990s' (a summary of research conducted for the Home Office in the wake of the 1994 cautioning guidelines involving a survey of all 43 police constabularies between 1995-1997). Their findings provided evidence that 'despite calls to improve the degree of consistency, there are still significant differences between forces on almost all aspects of cautioning policy and the decision making process.' and that 'variation between forces in the use of repeat cautions was significant' (Evans and Ellis, *Ibid.* pp.2 & 4).

Due Process

Home Office attempts to close cautioning loopholes, universalise police cautioning practices and eradicate disparity and inappropriate use through the imposition of ever more tightly worded guidelines, may represent official efforts to sustain a cautioning system which has enjoyed general political support and consensus (Pratt, 1986, p.212). It may also stem in part from efforts to counter academic and judicial criticism that cautioning fails to protect citizens and the community from crime, that it erodes the rights of suspects and that it undermines cherished precepts embodied within due process.

In his paper 'Diversion from the Juvenile Court' John Pratt suggests that cautioning - in this case juvenile cautioning - creates a dual-process in the disposal of cases:

For the more serious offenders, the juvenile court - with its emphasis on rights and due process - is retained...For the minor, the trivial and the first-time offender, there is diversion from the court and into an administrative decision making process the requisites of which are efficiency, discretion and adherence to public policy rather than emphasis on the technicalities of the individual case. (Pratt, 1986, p.214)

Both the concept of administrative justice and its associated pre-requisites, grounded in efficiency rather than protocol and discretion rather than rights and evidential technicalities, frustrates due process at every turn, preventing both judicial and juridical review of the facts-of-the-case and the right to mount a full and properly argued defence. Cautioning also frustrates attempts to enquire into what may lie behind these facts, including information given in mitigation as well as family, occupational and personal factors given as antecedent history, whilst also barring access to forms of post-verdict measures such as probation. Conversely, due process requires:

Formal, adjudicative, adversary fact-finding processes in which the factual case against the accused is publicly heard by an impartial tribunal and is evaluated only after the accused has had a full opportunity to discredit the case against him. The aim of the process is at least as much to protect the factually innocent as it is to convict the factually guilty. (It advocates) ..a procedural situation that permits the successful assertion of defences having nothing to do with factual guilt, it vindicates the proposition that

the factually guilty may nonetheless be legally innocent, ..by forcing the state to prove its case against the accused in an adjudicative context, the presumption of innocence serves to force into play all the qualifying and disabling doctrines that limit the use of the criminal sanction. (Packer, 1969, pp. 165-7)

With regard to the judicial and juridical review of the facts-of-the-case, Sanders points out that:

Neither suspects nor police officers are necessarily the best people to judge whether an offence has been committed. Did an alleged handler of stolen goods know they were stolen? Could a participant in a fight plead self-defence? In these circumstances a prosecution can lead to suspects obtaining legal advice which they would probably not receive if diverted. (Sanders, 1988, p.516)

More significantly, the construction of the facts of a case pursuant to an extra-judicial decision by the police to caution, circumvents an adversarial process in which the police themselves are acknowledged and necessary key prosecution agents. To expect them to balance the facts by playing both sides of the adversarial divide whilst also keeping in view the subtle nuances of the criminal law with regards to the best interests of the arrested person is naïve at best and injurious to the fair administration of justice at worst, a point well made by Brogden, *et al.*

The police, as the cautioning institution, assume the four separate functions of arresting, prosecuting, judging and sentencing. Inequality in relation to the traditional safeguards is an inevitable feature of the unequal bargaining power of the police in the cautioning decision. (Brogden, Jefferson & Walklate, 1988, p.111)

So complete is the police control of these (caution based) interactions that the official account is often reported in terms of 'the facts' without any attempt to engage in the language of proof or evidence. In these reports, the incident is clear, uncomplicated, exact and unproblematic. (McConville, *et al.* 1991, p.81)

McConville *et al.* raise significant issues here with regard to judicial rules of evidence that become sidestepped by the cautioning process. The sufficiency of evidence needed to secure a conviction is a question for the court to rule upon, as are factors which turn upon questions of admissibility by virtue of the means by which evidence has been secured, admissions obtained, credibility of witnesses established, handling and continuity of exhibits ensured, identification procedures followed and issues of hearsay considered.

A case is not simply an account of all the events in question. It cannot be for both legal and practical reasons. Some evidence is inadmissible, some irrelevant, some damaging to the prosecution. (At the same time) the police ... are not lawyers (and) do not recognise legal defences. There must therefore be large numbers of cases where, because of diversion, all parties are unaware of legal defences which would exonerate suspects. (Sanders, 1988, p.521).

Such intricacies are not known to the arrested person and are largely and conveniently forgotten by police when cautioning is thought appropriate. Such evidential considerations are a sine qua non of due process and would become dealt with on behalf of the defendant as-of-right within a criminal trial.

Beyond questions of fact and evidential sufficiency lie questions of access to legal representation. A suspect's right to legal representation is enshrined within both the Police and Criminal Evidence Act 1984 and its associated Codes of Practice,

but whilst this right must be extended to the arrested person by the custody sergeant on reception at the police station, suspects do not always understand fully the relevance of a solicitor to their predicament or may perceive a request for legal representation as increasing the seriousness of the trouble in which they find themselves. Equally, a case which has been defined at the outset as potentially cautionable by police may be pre-categorised as straightforward and unproblematic from a police perspective, thus shaping the police view concerning the lack of necessity for legal representation on behalf of the arrested person. Officers will be keen in such cases to top-and-tail the 'job', steering it through its various administrative phases with minimum disruption and delay and will lay little emphasis on or may advise the suspect against the need for a solicitor in such a case as is illustrated in FWCGEN0033 from my own data below:

I had just handed over to my relieving custody officer when I overheard an officer talking to a suspect through the wicket gate of his cell door:

SUS 'I want my brief calling'

PC (laughing) I already told you that you ain't going to be charged it's just going to be a caution, don't panic.

SUS 'I don't care'

PC (shaking her head) 'You ain't doing yourself any favours (uses man's name) just sit quietly and you'll be out before you know it' (shuts cell wicket and walks away.)

SUS (shouting) 'I want my fucking brief'

Sgt (To me) 'I'll see to him you get off'

FWCGEN0033

The police exercise considerable influence over and even sometimes determine, whether access (to a solicitor) will be accorded. Thus the arrestee may be persuaded to waive the right to a lawyer by a custody officer, saying that this will cause delay and mean longer incarceration, stating that the named solicitor does not come out at night or urging that legal advice is not needed in this case. In other cases the right might not be mentioned at all. (McConville *et al.* 1991, p.51)

Clearly such a position would not arise within a court trial where representation forms an integral part of the judicial framework and, despite the right of an accused person to self representation, a defendant is afforded a solicitor or barrister in the vast majority of cases heard both at Magistrates and Crown Courts.

Due process extends beyond issues of sufficiency, admissibility and representation to encompass mitigation, antecedents and sentencing. The facts that lie behind a case as much as the facts-of-the-case become considered and agents other than the police officer and advocate contribute professional opinion as to the most appropriate dispensation methodology. Despite its focus on a juvenile case and the age of the following account, it is illustrative of the way in which cautioning also subordinates the post-conviction elements of due process.

In some towns it is certain that police cautions are used in cases where other measures are in reality needed. One case reported in the press may be quoted as an illustration: A boy of twelve was brought up before a juvenile court for theft from a car. He had already been warned on three occasions by the police for damaging growing crops, for knocking a little girl about and using disturbing language to her and finally for damaging a 'keep-left' sign. It is

perhaps doubtful whether a second offence involving deliberate damage should ever escape with only a caution (a point that a Conservative Home Secretary was to make to conference some 55 years later) since its repetition might well imply a love of destruction that was indicative of some serious trouble. Certainly its real meaning cannot be judged without a knowledge of the child's personal life that the police have no means of acquiring. Moreover, it is obvious that (such a child) ..is in need of some further guidance or training. (Elkin, 1938, p.139)

Although at one level these fundamental elements of due process form no part of the cautioning arrangements, it would be inaccurate to suggest that the decision-making process pursuant to the administration of a formal adult caution involves no form of judgement as to the seriousness of the offence or the antecedents of the offender. For as Pratt suggests, the cautioning process is 'founded on judging, rating and classifying..(leading to) the differentiation between behaviour that just merits a caution and something more, so that ..a gradient of seriousness is introduced to distinguish between different types of behaviour or different kinds of offender.' (Pratt, 1986, p.228).

How though are such 'gradations of seriousness' such tariffs and such 'differentiation' to be achieved equitably and universally? Referring to the Home Office guidelines, little by way of definitional assistance is provided, save for warning police against the deployment of cautions in indictable-only offences (those which are triable only before a crown court and involve a jury). Indeed the guidelines underscore support for and trust in the discretion of the police. For it is here that the answers to questions of gradation, differentiation, categorisation and tariff formation can be found. As Evans suggests:

Determining (seriousness) is highly problematic as there are no universally agreed criteria for what constitutes a serious offence.

Among the police, one school of thought regards all criminal offences as by their nature serious 'or else we wouldn't be dealing with them' and another that ... each case has to be judged on its own merits. (Evans, 1991, p.603)

At the same time, the seriousness of the accused's actions will be a matter of opinion. One officer's judgement of the seriousness of an offender's actions will not always be the same as another's. (Westwood, 1990, pp.383-398)

Despite the problematic nature of such decisions, the responsibility for and thus the power to construct seriousness tariffs and to undertake to differentiate between offences rests with the police organisation in general and, as Westwood points out, with the appointed cautioning officer in particular. Such decisions are not subject to any form of structured external review (McConville *et al.* 1991) As such, this along with other facets of the cautioning process, remains a 'hidden' or 'low visibility' activity (Sanders, 1994, p.797 & McConville *et al.* 1991, Ch.6).

The autonomous and hidden nature of the cautioning decision may also cloak the impact on the selection of offenders for cautioning of what Landau & Nathan term 'extra-legal variables' (Landau & Nathan, 1983, pp.128-149) such as area, age and ethnic grouping. Their research, based on Metropolitan Police Juvenile cases, revealed significant evidence of the working-out of police bias and prejudice in respect of these extra-legal variables during the process of selecting case disposal options. Unsurprisingly, those individuals from more disadvantaged or vulnerable backgrounds, whether that disadvantage or vulnerability sprang from ethnic, class or location of accommodation sources, were found to be less likely to be cautioned than prosecuted and more likely to be cautioned than NFA'd (subject to no further action). These findings are supported by the work of Mott, who states:

The effects on decision making of police officers' subjective assessments of the juvenile and their parents' attitudes to the offence, assessment of the physical condition of the juvenile's home, parental attitudes and whether or not the juvenile was considered to show remorse for the offence were all related to the decision made. (Mott, 1983, p.251)

Not all commentators share the concerns over police decision making of Landau, Nathan & Mott. From research undertaken in Milton Keynes in 1988 Vince offers an altogether more supportive account of the police use of discretion during the dispensation of cautions.

The suggestion that an independent body should be set up to determine the outcome of each offence is mentioned (within the report). Such a bureaucratic establishment would diminish the police officer by removing his opportunity to exercise humane judgement in mitigating circumstances and his responsibility to consider the public interest in invoking or not the process of law. It seems an unnecessary measure when the research shows that the officer-on-the-spot uses his skills with humanity and common-sense. (Vince, 1988, Summary)

But at the same time as Vince is extolling the humane and professional approach to cautioning decisions by the officers in his study, he provides evidence that an informal and unsupported attitude-test is being used by these decision makers to filter-in or filter-out cautionable cases. The rule-of-thumb type criteria adopted include what one respondent terms 'the attitude and demeanour of the offender' and as another respondent within the Vince study suggests; 'I would not caution anyone who was being abusive.' (Vince, 1989, p.43). Such evidence proves

almost identical to my own research findings and points to a form of gate-keeping activity by which officers rule cases either suitable or unsuitable for caution based on both officer-specific and shared sub-cultural meaning systems which become transformed into official guidelines only as a form of ex post facto justification. Presumably, both the officers within the Vince study, Vince himself and writers such as Westwood, would classify such informal attitude-tests and gate-keeping as 'in the public interest (and) simply common-sense' (Vince, 1989, Summary)

This belief in the over-arching benevolence and humanity of police decision making finds resonance in the work of Westwood who treats as unproblematic the level of discretionary latitude and decision-making autonomy vested in the cautioning officer. Although, within his paper 'Adult Cautioning' Westwood does question the level (i.e. rank) at which such decisions should be made (inferring that a higher ranking officer may prove a more objective judge), he does however conclude that:

The officer-in-the-case will often be in the best position to give information about the effects (on the decision to caution) of any aggravating or extenuating factors such as the age of the victim, violence and so on, but it was not considered appropriate in view of the expected wide variation in views, for constables to make the judgement of seriousness. It was therefore decided to leave the decision to caution in the hands of an Inspector. (Westwood, 1990, pp. 383-398 *emphasis is my own*)

The logic of the Westwood argument appears flawed when consideration is given to just how the cautioning inspector is to furnish him/herself with both the facts-of-the-case and offender antecedents if it is not through testimony and information provided by the very same constables whom Westwood, by virtue of their 'variation in views,' would not trust to make cautioning decisions. As Sanders points out 'The view of the charge sergeant (as with the cautioning

Inspector) must therefore be gained from what he is told by the investigating officer. Thus information which could lead to a caution or no further action on grounds (for example) of too little evidence, can be easily concealed from the decision maker - either deliberately, accidentally or because it was simply not known at that early stage' (Sanders, 1985, p.73)

I began this section on due process with an extract from Packer's influential work 'The Limits of the Criminal Sanction' and it is also within this work that a description of a useful continuum can be found that seeks to describe the polarisation of two models of justice of which due process is one pole and crime-control the other. I have sought to tease-out many of the critical themes surrounding cautioning by setting its practical application against the judicial prerequisites of due process. In doing so, I have described how this form of case disposal largely undermines its precepts. Conversely, the extra-legal, extra-judicial and extra-juridical elements of cautioning appear to buttress crime-control ends espousing efficacy and productivity, key watch-words of the crime-control orientation. It is to this model that I now wish to turn.

Crime control

The subordination of due-process in favour of other policing goals through increased use of diversion based case disposal is for Pratt, an inevitable outcome of a claimed 'progress' in justice reform policy (Pratt, 1986, pp.213-4) whilst for Sanders and others it represents a consequence of the 'unfettered, absolute...uncontrolled andad hoc' nature of the discretionary basis of cautioning (Sanders 1988 & 1994, Enright 1993, McConville *et al.* 1991) which serves to underpin a gradual but continuing movement along a continuum away from a due-process model of criminal justice at one pole and towards a crime control model at the other (Packer, 1969, pp. 153-173).

The crime control model requires that primary attention is paid to the efficiency with which the criminal process operates to screen suspects, determine guilt and secure appropriate dispositions (it) must not be cluttered up with ceremonious rituals that do not advance the progress of a case (after all) facts can be established more quickly through interrogation in a police station than through the formal process of examination and cross-examination in a court. (Packer, 1969. pp.158-9)

Due process is subordinated to crime control in the practice of cautioning - ostensibly cautionable cases are often prosecuted where this serves policing objectives, and the interests of the victim - often opposed to those of the suspect, as the guidelines acknowledge, are also subordinated to those of the police. (Sanders, 1994, p.798)

Some police officers privately accept that a powerful motivation behind the increased use of the caution arises from police manpower shortages and a strict curtailment of police overtime which sometimes makes it difficult to follow through routine enquiries or prepare case papers for the prosecution stage. (Enright 1993. p.44)

Developing this due-process/crime control theme further, it can be argued that the increases noted in the formal cautioning of adult offenders by police from its inception following Home Office Circular 14/1985 to the present time, are explainable as a consequence of changes in police managerial practices and arrangements over the same period. This is particularly so in terms both of changes in financial management and budgetary control and also the forced

imposition on the police of performance indicators as monitoring devices of police performance at a local level that focus upon arrest, detection and clear-up rates.

By the mid - 1980's the police had lost their apparent immunity from the managerial imperatives that were being imposed on the rest of the public sector. From about 1982-3 the government began to pursue its 'Financial Management Initiative' (FMI) using private sector management methods to impose market discipline upon the Police. (Newburn 1995 p.79)

The impact on the police of the government's FMI has, over the last decade, led inexorably to the re-structuring of police management through the creation of borough based operational command units (BOCU's), powerful and autonomous local hierarchies with full responsibility for local policing provision over a given borough area together with the adoption of client-agency arrangements based firmly on a purchaser-provider model and the resultant development of quasi-markets (Johnston, 1992, Ch3). One significant outcome of these structural and fiscal changes has been the devolvement of budgets to local BOCU commanders who, as a result, now 'enjoy' substantial budgetary autonomy.

With such financial devolvement and consequential budgetary autonomy comes the opportunity for total resource management at the localised level as BOCU commanders become able to decide what level of policing services they can and will provide to their local population (or client group) and how they will slice-up their budget to achieve such policing 'business plans' against the backdrop of ever-present demands to do 'more-for-less' through increased efficiency and performance. 'By 'efficiency' we mean the capacity to apprehend and dispose of a high proportion of criminal offenders.' (Packer, 1969, p.158). This decentralising tendency then, places far greater power over the day-to-day policing

activities of a borough operational command unit into the hands of individual BOCU commanders whilst at the same time tempering these new management powers with performance demands and budgetary targets.

The linkage between budget and performance inevitably requires careful management of police time and activity, creating a climate within which labour intensive police-work becomes scrutinised and a new set of organisational meanings are forged which emphasise throughput, outcomes, results, clear-ups and productivity.

From a managerial point of view....the disposal of cases at an early stage in the criminal process (through cautioning) saves the time and resources involved in a full prosecution case. (Campbell, 1997, p.52)

The characteristic elements of the due-process model, so eloquently articulated by Packer within his work 'The Limits of the Criminal Sanction' (1969) become subordinated and suppressed by this new efficiency 'crime-control' model with its associated system of meanings and meaningful actions that stress

a high rate of apprehension and conviction (within) a context where the magnitudes being dealt with are very large and the resources for dealing with them are limited. There must then be a premium on speed and finality. The image that comes to mind is an assembly-line conveyer belt down which moves an endless stream of cases, never stopping, carrying the cases to workers who stand at fixed stations and who perform on each case as it comes by the same small but essential operation that brings it one step closer to being a finished product, or, to exchange the metaphor for the reality, a closed file. (Packer, 1969, p.159).

In the search for budgetary efficiency, buttressed by effective total resource management and underpinned by impressive performance indicators, 'it follows that extra-judicial processes should be preferred (by BOCU commanders) to judicial processes, informal operations to formal ones.' (Packer, *Ibid.* P.159). Clearly cautioning reifies many if not all of the components of Packer's crime-control model and stands as perhaps the most obvious embodiment of an administrative or extra-judicial procedure that places outcome over process. Consequently, its use as a case-disposal method can be argued to be instrumental - a management tool that fuels the crime statistic and clear-up rate machine.

If management policies on case-disposal are driven by an underlying need to favour the crime-control model above the due-process model on the grounds of expediency and efficiency, the ability to do so grows from the unchallenged decision-making autonomy vested in the police as the cautioning institution, for if it were not for the police's ability to dispose of cases through an internal cautioning procedure free from judicial and external review, they would be required to operate in unison with due-process systems that hold as transcendent the suspects rights to trial by peers and the fundamental presumption of innocence.

The monitoring of performance and the push towards greater 'efficiency' inherent within the crime-control model increasingly embraced within this new policing order inevitably shapes and circumscribes an individual officer's actions toward, understanding of and interventions with suspects as well as with colleagues and supervisors. Within this new cost-centred climate, with its emphasis on throughput, speed, turnaround and efficacy, it is inevitable that an individual officer should slowly recast ways of thinking about methods of disposing of cases that he¹ has instigated to ensure parity with this new regime. Over time he will act

¹ Throughout this thesis I have tried where possible to avoid gender specific language by using terms such as officer, suspect and offender, etc. This has not always been possible and on

upon the new meanings generated, perhaps through an initial description to decision makers of the facts surrounding the case that weigh in favour of a caution, perhaps through voiced support during any disposal decision making which proposes an extra-judicial outcome. What is important to stress is that changes to managerial, structural and budgetary arrangements of this nature, over time, permeate individual consciousness, becoming integrated within existing frameworks of knowledge, experience and understanding that ultimately shape and drive police case disposal decision-making.

Net Widening

To return to the example of police discretion, where the police used to have two options - screen right out (by taking no further action) ...or process formally (by way of a charge or summons) they now have the third option of diversion. It is this possibility which allows for net extension and strengthening. For what happens is that diversion is used as an alternative to screening out (releasing with no further action or via an informal warning) and not as an alternative to processing. (Cohen, 1983, p.52)

Within the context of the preceding discussion concerning the adoption of a 'managerial' crime-control orientation to case disposition as one arm of a performance based management strategy, it is clearly in the interests of the police in terms of clear-up rates and officer performance that cases become processed and 'caught' through diversionary methods rather than 'lost' to the system through screening out as no further action (NFA)..

Apart from the consequences discussed by Cohen above (that turn upon post-arrest decision making), there is, additionally, the possibility that patrolling

occasions, I have referred to officers and suspects as 'he' in order to keep the work readable and to

officers, aware of performance monitoring at the individual level and the prospect of performance related pay-awards, will become increasingly inclined to arrest for behaviour that they would previously have been dealt with through informal street-based resolution, in the knowledge that they can always steer the decision making process within the police station towards caution and thus obtain a quick and easy result (Laycock & Tarling, 1985, Sanders, 1988). In pre-caution days these same officers, facing the prospect of case-paper preparation and court attendance for what may be a petty or minor transgression, would have been more likely to have adopted resolutions such as an informal warning or the taking of a suspected youth home to his parents.

Far from diverting offenders, police cautioning may make formal intervention more likely; it may increase the level and/or intensity of intervention, victims may not be consulted, or even informed, and certainly stand to gain little compensatory redress; the legal rights of suspects may be seriously undermined; and after all that, there is no certainty that cautioning deters individuals from further offending. (Campbell, 1997, p.55)

When McConville et al spoke of the cautioning arrangements, by virtue of their unregulated and autonomous character, as providing the police with the ability to literally 'construct criminality' (McConville, *et al*, 1991, pp. 50-51) they suggest two significant consequences of the decision to caution, both of which impact upon the net-widening debate. Firstly, a formal caution 'is recorded on the Police National Computer and can be cited in court during a subsequent prosecution' (Enright, 1993, p. 446). As such, although not a conviction per se, it is, nonetheless, a form of tag by which a person may be logged, located, categorised and tracked. This in itself is a significant expansion of police intelligence gathering activity, providing ample opportunity for 'police generally to extend the net of surveillance and intelligence, or to find out more about particular ..people

avoid it becoming disjointed.

who may be suspected of particular crimes.’ (Brogden, Jefferson and Walklate, 1988, p.110). Secondly, the decision to caution, by its very nature increases the likelihood of subsequent prosecution, should the individual be arrested again, whereas disposal by way of no-further-action (NFA) or informal warning would not attract this consequence. In this sense, disposing of a case through NFA is akin to police forgetting-it-ever-happened, it is a disposition without consequence. A caution, conversely, increases rather than decreases the scope of the police should the offender ‘come-again’.

Inherent within the labelling theory of thinkers such as Becker (1973) is the assumption that a diversionary model decreases the risks of stigmatising individuals by injecting them into a criminal justice system that has the power to attach labels and see that they stick.

The stigma of a conviction can cause irreparable harm to the future prospects of a young adult and careful consideration should be given to the possibility of dealing with him or her by means of a caution. (Codes of Practice for Crown Prosecutors, Para’ iii)

But the net-widening propensities of cautioning arguably create a form of second level stigma through the acquisition of the cautioned label to which a number of consequences for future action may accrue both for the police and for the court system. As such, the caution does not represent what many have argued, namely diversion away from the criminal justice system but instead represents for many, a closing down of possible future diversionary possibilities once a previous caution is taken into account either by police, when deciding whether or not to instigate charge and bail proceedings, or by courts once a previous caution is cited should the person go on to be convicted of the new offence for which they now stand accused.

Pursuing his critique of the 'progress' of the criminal justice system, Pratt (1986) also notes that: 'each step along the route of juvenile justice reform and progress (of which cautioning is his central focus in his paper) has inflated the number of young people being brought within the juvenile justice network and has increased the capacity for surveillance, regulation and intervention in the lives of young people'. (Pratt, 1986, p.214)

We arrived then at something close to a total reversal of all the supposedly radical justifications of which the original diversion strategy was based; reduction of stigma and labelling, non-intervention...more justice and reduction of system load. Instead, intervention comes earlier, it sweeps in more deviants, is extended to those not yet formally in agencies and it becomes more intensive. (Cohen, 1985, p.53)

The right to undertake extra-judicial case disposal activity without external control or review, creates a completely new decision-making stage for the police which hitherto would have been a judicial stage, populated by a judge, jury, defendant and both prosecution and defence advocates. It is to this new stage that the appropriate police actors; the arresting officer, custody officer and cautioning Inspector bring their individualised notions of deviance, desert, seriousness, remorse and public interest and, through interactional negotiation, these varying individualised notions become synthesised into a collective decision as to the appropriateness, or otherwise, of a particular case disposal option. As such, the introduction of formal police cautioning has added to police recipes of action by expanding the legitimate case-disposal vocabulary with new possibilities for interpreting and responding to deviant behaviour. These meanings are (somewhat recursively) shaped also by two further elements in addition to those mentioned below, namely individually held notions of appropriate disposition for this class and type of offence based on a schema of typifications of offences held by the

officer and based on his experience of case disposition to date. As cautioning becomes embedded within the collective police psyche so a class of cautionable cases will arise upon which decisions to caution other cases will rest. It is to this concept of the construction of shared meaning through interactional negotiation between significant actors that I now wish to turn.

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Chapter 3 – Formal adult cautioning and police occupational culture

The pivotal actor within the cautioning process is the custody officer, a police officer of the substantive rank of sergeant with statutory responsibility for a myriad of fundamental decisions concerning custody, its authorisation, duration, character, patterning and consequences. This actor controls the custody area *setting* (Goffman, 1990, p. 34), maintaining its props and managing the interactional performances that take place there so that, as far as possible, the symbolic meanings that this setting holds for interactants remains fixed and congruent with its ritualistic function. It is to this *dramaturgical stage* (see Goffman 1990) that the suspect is taken following street action by the arresting officer and it is upon this stage that the varying significant actors; the arresting officer; the witnessing officer; the custody officer and the duty inspector, come together in routinized *focus gatherings*, adopting a shared ‘focus of attention, a mutual and preferential openness to verbal communication, a heightened mutual relevance of acts. Their order pertains largely to what shall be attended and disattended and through this, to what shall be accepted as the definition of the situation.’ (Goffman 1972, pp.17-19, 24, 31²) It is within these focussed gatherings that officers will negotiate what meaning should be ascribed to the ‘deviant’ incident in question and, as a consequence, what disposal decision should be its consequence.

But whilst much of the interactional negotiation and construction of meaning occurs in this custody setting within these focussed gatherings, the decision as to whether to caution or to prosecute can only be fully understood with additional reference to antecedent factors stretching back to the moment at which the arresting officer first chose to direct his attention towards the actions of the other on the street, in an effort to understand and interpret them. For it is the ascription of meaning to action, and the transition of such constructed meanings back into reflexive action, at *this*

² This explanation of the nature and function of focussed gatherings represents something of a composite definition built up from various parts of Goffman’s ‘Encounters’ essay. To avoid fragmentation I have included the various pages from which it is drawn at the end of the reference.

juncture, that serves to create the very contextual framework within which all subsequent deliberations about the case will be located.

Chosen operational focuses and police/suspect encounters

Patrolling activity, whilst not continuously so, is characterised by what I shall call *chosen operational focuses*. Out of a vast array of experiences of the actions of others which form a patrolling officer's ongoing *stream of consciousness* (Schutz, 1970, p.57) will be those which can be typified by the officer as deviant or at least potentially deviant and worthy of closer police attention.

Within a given legal code and its rules of procedure the agencies of law enforcement and justice enjoy a considerable leeway of discretion. They do not simply respond to crime but, in making decisions about what types of crime to respond to and by what means, they act as a positive determinant of the pattern of criminality. (Lea, 1992, p.72)

In common with Becker (1973, p.9) however, I would emphasise that the closeness of fit between any act and its meaningfulness to the officer in terms of deviant typifications, should not be seen as imbuing the act with intrinsically deviant qualities. Instead it should be seen as describing how this process of ascribing meaning to action is an outcome or product of the officer's unique personal and policing biography, itself built upon a common stock of knowledge and system of values, beliefs, meanings and definitions, shared by his social group, this is because the patrolling officer;

finds himself at any moment of his daily life in a biographically determined situation, that is, in a physical and socio-cultural environment as defined by him. To say that this definition of the situation is biographically determined means to say that it has its

history, it is the sedimentation of all mans' previous experiences (and their interpreted meanings and resultant definitions), organised in the habitual possessions of his stock of knowledge at hand, and as such, his unique possession, given to him and him alone. This biographically determined situation includes certain possibilities of future practical or theoretical activities which shall be briefly called 'the purpose-at-hand.' It is this purpose-at-hand which defines those elements among all the others contained in such a situation which are relevant for this purpose. (Schutz, 1970, p.73)

From this theoretical vantage point we are afforded a view which might be seen as the working-out, at the level of individual social action, of Becker's assertion that 'social groups create deviance by making the rules whose infractions constitutes deviance' (Becker, 1973, p.9). The rules created by the social group are held within individual consciousness as elements of a stock-of-knowledge and a shared system of typifications from which the actor draws in order to define the actions of others and make sense of situations and, by doing so, orient his actions reflexively. But elements of a situation (as defined by the officer) which subsequently come to be called 'the-facts-of-the-case' following an arrest:

Do not have a uniform existence apart from the persons who observe and interpret them. Rather, the 'real' facts are the ways in which different people come to define situation. (Volkart, 1951, p.30)

Up to this point I have argued that the result of a chosen operational focus will be the fixing of patrolling attention upon a selected act 'caught in the police headlights' so to speak, by virtue of its potential fit with typified definitions-at-hand of deviant activity, defined with reference to an officer's unique personal and policing biography. But this is what I would term a definition of the situation from *the distant standpoint*, that is to say, from a point outside of any subsequent encounter

that might take place between the officer and the suspected 'deviant', during which the meaning of the act may become negotiated and, as a result, modified.

The extent of any subsequent modification to this definition of the situation is contingent upon various factors, some of which I will consider below. But it should be realised that the initial ascription of meaning to the actions of the other from this distant standpoint not only drives the officer's consequent actions, but will also frame any resultant interaction with the suspected 'deviant' during an encounter by circumscribing the array of alternative meanings the officer will be prepared to allow into the negotiation of meaning of the actions witnessed. In this way the definition of the situation from the distant standpoint creates 'a reality in terms of which (the officer) will structure his actions.' (Haralambos, 1984, p.16)

As the officer will often reach an interactional encounter with only a partial understanding of the meaning it holds, he will hope to gain additional understanding during the encounter itself, initially by talking with the other, but more likely through questioning him and testing out his version of events, overlaying it upon what he has seen and heard for himself and what he understands to be the case up until that point.

Such encounters are often heavily scripted and proceed along expected discourse paths towards anticipated outcomes. In other words the suspected 'deviant' is expected and often agrees to 'play-the-game'. The rules of the game are subtle requiring the suspect to utilise an assortment of social and interactional skills such as deference, acquiescence to the assumption of subordinate status and respect for stated authority. Failure to do this may lead to failing an informal attitude test. Here the informal and un-stated ground rules serve to re-assure the officer that his position of power remains unthreatened and that the person is not to be typified as 'anti'.

A good deal of enforcement activity is devoted not to the actual enforcement of rules but to coercing respect from the people the

enforcer deals with. This means that one may be labelled as deviant not because he has actually broken a rule, but because he has shown disrespect to the enforcer of the rule. (Becker, 1973, p.158)

This threat must be counter-balanced on the part of the 'deviant' through a projection of self which attempts to confirm membership of the law abiding majority and, as far as possible, must fix the meaning of the act in conforming rather than deviant terms if arrest is to be avoided. The suspect must try to re-cast his previous actions, to convince the officer that he has got hold of the wrong end of the stick, or at the very least, that the behaviour witnessed was in no way as serious and worthy of police intervention as the officer presumed from the distant standpoint.

It is to the individual's advantage, of course, to present himself in ways which best serve his ends (and in this way) the self becomes an object about which the actor wishes to foster an impression. (Meltzer, Petras & Reynolds, 1975, p.69)

Another important ingredient in the ensuing encounter is the fundamental imbalance of power held by both parties. Although any subsequent hearing at court (should it proceed that far) will place the onus of proof almost entirely on the prosecution - who are required to prove their case beyond all reasonable doubt - during the encounter at street level this position is often inverted, the burden of proving a contrary definition becoming transferred on to the suspect. Irrespective of whether the officer's projected status and power become accepted by the other during the encounter, the power to stop, question, search, detain, arrest and imprison rests with the officer. This adds a significant dynamic to the nature of the interaction which, as a consequence, becomes characterised by a degree of internal tension. All this serves to erode what Abel conceived of as 'an ideal community of communication (Abel, 1983, p. 597) for as Habermas suggests;

Linguistically mediated interaction is both the reason for the vulnerability of socialised individuals and the key resource they possess to compensate for that vulnerability. (Habermas, 1990, p.201)

A consequence of these arguments, and one that characterises the interactional encounters that take place throughout the duration of the arrest-custody-case-disposal process, is that certain suspects often find they have what I will term distinct *negotiation disadvantages* in such circumstances. For example, an individual may lack confidence in interactions with authority figures or may not possess the necessary verbal dexterity to negotiate a more favourable interpretation of their actions. Alternatively, such negotiation disadvantages may spring from who a person is, their age, gender, appearance or ethnicity impacting on the officer's prejudices which themselves are likely to be tightly integrated with a biographically influenced world-view. Furthermore, within the police station following arrest, such disadvantages can become amplified by the dislocated and isolated position of the suspect who will often become excluded from decision-making encounters concerning his case, that is to say, he will not be allowed membership of the focussed gatherings that form as a means of progressing his case.

The facts of the case

Before moving on to a description of the symbolic significance of the custody setting as a '*region of performance*' (Goffman, 1990) I would briefly like to turn to that part of the initial reception procedure at the police station which I shall term *the facts-of-the-case*.

The meanings ascribed to the actions of the other, loosely framed from the distant standpoint and subsequently modified through face-to-face interactional negotiation between officer and suspect at the scene during any subsequent encounter between the two, create an imperative for decision-making action and a 'factual' basis upon which the officer will decide whether or not to make an arrest. As Becker suggests;

‘The reality they (social actors) create by their interpretation of their experience (is the reality) in terms of which they act.’ (Becker, 1973, p.174)

If an arrest is made, the initial reception procedures to which both the suspect and the arresting officer will then be subjected on arrival at the custody area, marks a significant point of transition for this reality and the meanings which underpin it. This is because the ascription of meaning to action that justifies the arrest, must be explained to and must be tested by the custody officer to ensure that there is conformity with typified instances of both lawful arrest and justifiable grounds for further detention as these legal concepts are understood by the custody officer.

On arrival at the police station then, the facts-of-the-case are explained by the arresting officer who, in effect, provides a detailed verbal account justifying his decision to arrest by describing the actions of the other and his interpretation of the meanings of those actions. Drawing on a Schutzian concept, the officer constructs a meaningful account of the ‘deviant’ episode by reflecting back upon his *stream of consciousness* - an unbroken stream of experiences of the other - and selecting from it discrete instances to which deviant labels are then attached.

Because the concept of meaningful experience always pre-supposes that the experience of which meaning is predicated is a discrete one, it is clear that only a past experience can be called meaningful, that is, one that is present to the retrospective glance as already finished and done with.

Only from the point of view of the retrospective glance do there exist discrete experiences (which are meaningful) for meaning is merely an operation of intentionality. (Schutz, 1970, pp. 63-4)

This process of selection can be seen as distinctly partial and *intentional* and the means by which the officer pursues his *project at hand* which, in the case being

considered here, is to justify the arrest by describing the incident in a way that meshes with the custody officer's interpretation of justifiable grounds for both lawful arrest and further detention. The arresting officer will attempt to define the situation by citing instances of action as what Garfinkel terms *the document of a pre-supposed underlying pattern*.

(In this way the actor treats) an actual appearance as 'the document of', as 'pointing to', as 'standing on behalf of' a pre-supposed underlying pattern (in this case a classifiable act or acts of deviance). Not only is the underlying pattern derived from its individual documentary evidences, but the individual documentary evidences in their turn, are interpreted as the basis of 'what is known' about the underlying pattern. Each is used to elaborate the other. (Garfinkel, 1992, p.78)

The corollary of this argument is that, it is through the *combined* interpretational activities of the police, and their use of these discrete interpretations as documentary forms of accounting which stand for underlying patterns of deviance, that a system-of-meanings of deviant activity is constructed and sustained by the police themselves. In effect, the police build a pattern-set for a particular form of deviant activity out of documentary forms of its 'occurrence' which in turn serve to define and sustain it.

Ethnomethodological consideration of the interaction between the arresting officer and the custody officer also exposes the indexical nature of the information delivered in the course of accounting for the arrest during an officer's facts-of-the-case testimony (Garfinkel, 1992, pp.4-7). Whilst for the arresting officer the 'information' he supplies in his account of the incident is what Manning & Hawkins (1989, p.143) would term *primary* information, that is information arising out of his own direct, reflected-upon lived experience, and encoded only by his own processes of interpretation and understanding, the information 'received' by the custody officer

is pre-encoded by the arresting officer, or *secondary* information; he wasn't at the incident and has no direct experience of what took place, he is thus reliant upon the testimony of the arresting officer to furnish him with information that will allow him to understand the incident, sufficient for his own definitional purposes. The meaning of the imparted information, in the form of the facts-of-the-case, is therefore indexical, that is to say that at one-and-the-same-time, it is held by the custody officer to be an 'actual appearance' (or) ... 'the document of' ... a presupposed underlying pattern' (Garfinkel *Ibid*) in this case of unlawful activity that can only be understood through its location within a meaning context that only the arresting officer (and perhaps to a lesser extent the suspected 'deviant') can supply.

'facts of the case' are thus treated as some taken-for-granted reality rather than as the results of complex processes in which reality is socially constructed and reconstructed. (Baldwin, 1995, p.25)

This has real consequences for subsequent case decisions such as the decision to caution, for such decisions turn upon the very meaning that the facts-of-the-case hold for the significant actors concerned. Such accounts serve to frame the custody officer's perceptions of *what it must have been like*, accordingly, the selective and partial nature of such facts-of-the-case accounting create a framework of meaning which drives subsequent decision-making actions in particular directions. For example, the arresting officer may choose to amplify the suspect's attitude on arrest whilst playing down the initial act that led to police intervention, anticipating that through such amplification, a particular definition of the situation will be constructed and sustained from which a certain case disposal decision may logically follow. From a Schutzian perspective, the 'intentional' focus upon discrete elements of his stream-of-consciousness of the reflected-upon event, allows the officer to decant only those elements that best serve his current purposes.

Reception procedures and their impact on sense of self

Interactions that take place within the custody area, particularly those involving the suspect, are characterised by carefully sustained control and power. This interactional control is maintained through the convergence of various dramaturgical elements such as the symbolic significance of the setting itself (as a stage for dramaturgical action) exemplified by its aura of security signified by its many bars, locks, cells, corridors and heavy steel doors, together with the various trappings and mannerisms displayed by officers, what Goffman calls *personal front* (Goffman, 1990, p.35) in the form of uniforms, insignia, equipment and also the officers' *manner* and *appearance*.

'appearance' may be taken to refer to those stimuli which function at the time to tell us of the performer's social statuses (and) temporary ritual state: that is, whether he is engaging in formal social activity, work or informal recreation. 'Manner' may be taken to refer to those stimuli which function at the time to warn us of the interaction role the performer will expect to play in the oncoming situation. (Goffman, 1990, p. 35)

These characteristics of setting, personal front, manner and appearance cohere to create a symbolic environment which imbues interactional encounters taking place there with specific, contextual meaning, they set the scene, create boundaries for action but above all serve to emphasise positions of power which themselves sustain interactional control.

If, as Manning and Hawkins (1989) suggest, the meanings that drive discretionary, decision-making action occur not only as a pragmatic response by enforcers to organisational policy but also as a;

common-sense moral conception of an individual's desert, this leads to judgements about the reach and application of the criminal law (and of cautioning policy) being premised, often very substantially, upon interpreted signs such as the appropriateness of a suspect's demeanour. (Manning & Hawkins, 1989, p.140)

And as we have seen, any such judgements by officers about the 'interpreted signs of appropriate demeanour' by suspects occur within a highly contrived, symbolic and ritualistic environment within which the suspect suffers multi-faceted negotiational disadvantage and to which the suspect arrives very much as a stranger in a strange land.

To him the cultural pattern of the approached group does not have the authority of a tested system of recipes, consequently the shape of his contour lines of relevance by necessity differs radically from those of a member of the in-group as to situations, recipes, means, ends etc. In other words, the cultural pattern of the approached groups is to the stranger not a shelter but a field of adventure, not a matter of course but a questionable topic of investigation, not an instrument for disentangling problematic situations but a problematic situation itself and one hard to master. (Schutz, 1970, pp. 87, 92-3)

To the suspect the custody setting presents itself as a problematic and alien environment, a ritualistic and symbolic stage on which he is to play only a minor part in his own destiny. But at the same time, he must try and construct a performance which casts him in a favourable light, despite not fully grasping the unfolding plot and having only a loose conception of the cues and prompts.

A factor in the complex interchange of meanings, ideas and typifications within an interaction is the conception of self held and projected by interactants (Mead, 1934. Cooley, 1930). A taste of this is evident in Goffman's concepts of *manner* and

demeanour (Goffman, 1990). In the case at hand, an officer may project an image of self as part of the initial definition of the situation which packages together such components as authority and status as well as possible others such as intelligence, street credibility, competence and so on. This complex-self is projected not only for the purpose of establishing its credibility and acceptance among the other police interactants and its place within and consequence for the forthcoming performance and the part he will play in it, but also as a vehicle for sustaining control, articulating power and for pressing forward with his own projects-at-hand.

As with other types of meaning, this sense of self, injected into interactional activity, is indexical (Garfinkel, 1992: 4) in that it is readily understandable to others mainly by its contextual location. For example, the elements which go together to construct the projected 'police-self' described above have the most immediate and obvious meaning and resonance within the context-situation (the custody area) within which they arise, supported as they are by confirmatory symbols such as personal front and setting.

In the course of action there is an identification of the self with the objective sense of the action; the action that is going on determines for that moment, the self-apprehension of the actor, and does so in the objective sense that has been socially ascribed to the action...for that moment (the actor) apprehends himself essentially in identification with the socially objectivated action. (Berger & Luckman, 1975, p.90)

This has implications for the suspect whose self-apprehension is in terms of the socially objectivated action of being, for that moment, a suspected offender, stranger and prisoner. This 'identification of the self' or 'self apprehension' is a powerful element of interactional-disadvantage and is one which is often continually re-affirmed by officers keen to keep the suspect in his place and remind him of where he is and how he should act. It becomes further threatened through depersonalising

phases embedded within the in-custody procedure, most strikingly so during the booking-in process.

Although temporary in nature, the *mortification of self* (Goffman, 1987) that occurs during the booking-in procedure within the custody area, has many significant parallels with those that Goffman uncovered in his research into total institutions, most notably in evidence in his essay entitled 'Asylums: Essays on the Social Situation of Mental Patients and Other Inmates' (1987).

The recruit (the suspect for our purposes) comes into the establishment with a conception of himself made possible by certain stable social arrangements in his home world. Upon entrance, he is immediately stripped of the support provided by these arrangements...he begins a series of abasement's...of self (which becomes) systematically, if often unintentionally, mortified.

The barrier that (the police station) places between the inmate (the suspect in our case) and the wider world marks the first curtailment of self. (Goffman, 1987, p.24)

Other, albeit temporary, debasements follow. The suspect is searched (and may on occasions be strip searched) and his property is laid out for all to see before being 'pawed and fingered by an official as he itemises and prepares them for storage' (Goffman, 1987, p.35).

There is (then) a violation of (his) informational preserve regarding self. During admission, facts about (his) social statuses and past behaviour - especially discreditable facts- are collected and recorded in a dossier available to staff.

New audiences not only learn discreditable facts about (him) that are ordinarily concealed, but are also in a position to perceive some of these facts directly. Prisoners...cannot prevent their (gaolers) from seeing them in humiliating circumstances. (Goffman, 1987, p.32)

He is then placed in a cell and his name and 'offence' are entered on a chalk board attached to the wall by the cell door. Interactions with him may then move location, taking place through the cell wicket or within the stark confines of the cell itself.

This temporary mortification of self serves to further amplify the interactional inequalities, characteristic of in-custody encounters, which necessarily follow from the impact of dramaturgical elements such as setting, personal front, the officer's presentation of self, the alien nature of the approached group and from other negotiational disadvantages detailed above. All of these factors converge and become articulated at those stages during the in-custody process when the suspect is afforded opportunity for interaction with the officers in the case, whether informally (what may be conveniently called 'corridor conversations' not logged as official encounters in the custody log) or within formalised encounters such as interview.

Focussed gatherings

At key stages within the in-custody process the significant actors (and by this I specifically mean the officers concerned in the case together with the custody and duty officers) come together to discuss progress and potential case-disposal options. By doing this, they locate experiences-to-date and the meanings affixed to these experiences in terms both of their antecedents (that is, in terms of what they have come to learn both about the situation-at-hand and about the suspect himself) and in terms of anticipated and projected future action.

It is important to realise that our actual experiences are not merely by retention and re-collections referred to our past experiences. Any experience refers likewise to the future. It carries along protentions of occurrences expected to follow immediately. (Schutz, 1970, p.137)

From a phenomenological position it is necessary, in order to ensure the internal consistency and coherence of the theory of ascribing meaning to experience only through reflection and retrospection, that anticipated and projected future action should become meaningful in a similar way, that is, by the actor imaging his project-at-hand as already completed and, in so doing, turning reflective attention back upon the act in anticipation. It becomes a fantasised past act. By doing so the officers construct an anticipatory structure of future action, or to use a term coined by Goffman, they create *a field for fateful dramatic action* (Goffman, 1972, p.25)

A matrix of possible events and a cast of roles through whose enactment the events occur, constitute together a field for fateful dramatic action, a plane of being, an engine of meaning. (Goffman: 1972, p.25)

It is timely at this juncture to deal with a criticism levelled against the supposedly detached micro-sociological nature of approaches such as dramaturgy, 'in other words (that) the dramaturgical approach ignores the macrocosm within which its micro-level concerns are imbedded.' (Meltzer, Petras & Reynolds, 1975, p.73) How, for example, does the transcendent nature of legal codes, regulations and policy inform the frame of meaning within which anticipated and projected future action is grounded? It is acknowledged that officers do not choose from an unlimited array of possible case-disposal alternatives, instead I would suggest, such circumscription occurs not through the simple overlaying of the fixed meanings of such laws and guidelines but through their expression-in-action. As I have argued above, such

legal discourses become elements of a wider stock-of-knowledge and a system of recipes-of-action and as such are given voice through biographically determined ways of looking at and resolving problems at hand.

This position can be illustrated by locating it within Goffman's theory of *focused gatherings*. When significant actors come together for purposive interaction, to discuss progress and potential case disposal options for example, such gatherings involve;

A single visual and cognitive focus of attention, a mutual and preferential openness to verbal communication; a heightened mutual relevance of acts. Their order pertains largely to what shall be attended and disattended and through this, to what shall be accepted as the definition of the situation. Here it can be seen that (a focused gathering) acts as a boundary around the participants, sealing them off from many potential worlds of meaning and action. (This) barrier to externally realised property, not only selects but also transforms and modifies what passes through it. (Goffman, 1972, pp. 17-19, 24, 31)

As such, legal and policy discourses arise as indexical discourses, that is, their meaning-at-hand and relevance to the situation is a consequence of their interpretation and context-specific use within the interaction itself and full understanding of their relativity and plasticity requires that they be located with reference to that context. The explicit legal definition of theft, for example, is given meaning or interpreted only in the light of not only the deviant act under consideration but is also inexorably inter-linked with a whole web of meaning concerning who the person is, how he has behaved, where he did it and to whom.

To extend this position further, it is not that legal, procedural and policy instruments *create* the context within which the suspect's actions are considered

and the meanings of those actions distilled, rather it is that these formal elements find meaning *only* within their contextualised use as this is dynamically constructed within the ongoing sense-making and decision-making work of the focussed gathering itself. This is only possible because of the interpretational nature of these codes, they are plastic precisely because their wording cannot possibly fit all eventualities and it is this plasticity that provides officers with interpretational latitude. Accordingly, the structuralist's position that micro-level interpretation of social action fails to accommodate the transcendent and influential 'given' nature of such formal codes as overarching frames of meaning, erroneously ignores the relationship between such presumed dictates and their transformation into meaningful social action within focussed gatherings.

Organisational rules are not merely transposed from theory to practice, they are mediated at various levels which transform their meaning and import. While the formal organisation gives rise to a set of rules for both practice and justification, the appropriate invocation of rules requires a second order-system. There must be rules for using rules. (Norris, 1989, p.93)

Whilst case disposal decision making as an event, necessarily occurs towards the end of the arrest-custody-case disposal process, I hope I have made explicit the complex and inter-dependent nature of its interactional, phenomenological and dramaturgical antecedents. As such, it is reflexive action and understandable only through its location within the stream of events underpinning it.

The idea of dealing with the case through cautioning may arise only at the stage of the in-custody process at which a focused gathering is convened which turns its attention towards case-disposal. This represents one pole of a continuum at the other end of which might lay a partial, intentional and selective weighted description of events, provided by the arresting officer, who directs focused attention during 'facts-of-the-case' testimony, upon those elements of the act which point towards its fit or

lack of fit with typifications of cautionable cases held by others. For example, when 'giving-the-facts' the arresting officer may amplify or reduce the trivial nature of the act or its minor consequences, as well as highlighting or down-playing the good behaviour and obvious remorse displayed by the suspect. In so doing, even at this early stage, the arresting officer creates a potential field for fateful dramatic action that attempts to construct a boundary of meaning and relevance thereby delimiting consequential decision-making.

Turning back to the previous section, it can also be seen how the meaning that cautioning holds for the various significant actors impacts on potential case-disposal outcomes. The meaning of the caution becomes a key interactional element that shapes the definition of the situation and serves to construct a specific reality from which meaningful action follows. If cautioning has meaning as an alternative method for dealing with those cases that lack the necessary evidence to pursue a prosecution, it will not find use in 'jobs which are stone bonker cases' (that is, cases felt to have overwhelming evidence and which are assured of successful prosecution). If, however, cautioning has meaning for officers as a means by which suspects are let-off, this will have quite different consequences and those people who officers feel deserve punishment (irrespective of the weight of evidence against them) will be unlikely to receive cautions.

Accordingly, I would argue that there is a requisite symmetry between the meaning that cautioning holds for each officer, the meanings ascribed to the supposed deviant act in question and the meanings that officers have assigned to the projections of self presented by the suspected 'deviant' during interactions with him. All cohere to shape and drive sense-making and decision-making action along particular meaning pathways.

To allow for this definitional relativity, that is, for a variety of meanings of cautioning to drive a variety of case disposal outcomes under one umbrella of official cautioning policy, it becomes necessary that the operationalisation of the

meaning of a caution should become aligned to cautioning policy and the guidelines that underpin it through what I shall term *post-decision accounting activity*. By this I am describing the process whereby cautioning policy only enters the equation at the stage of accounting for or justifying a particular case disposal decision. This accounting involves the selection of instances of behaviour, and characteristics of the case in hand which are then made to stand on behalf of the underlying pattern of typified cautionable cases felt to be implicit in policy. In this respect, accounts are a part of the thing they describe and explain. (Haralambos, 1984, p.556)

Accounts are not independent of the socially organised occasions of their use. Their rational features consist of what members do with, what they 'make of' the account in the socially organised actual occasions of their use. Members 'accounts' are reflexively and essentially tied for their rational features to the socially organised occasions of their use, for they are features of the socially organised occasions of their use. (Garfinkel, 1992: pp.3-4)

This theory of *ex post facto* justificatory accounting activity has significant consequences for a government whose attempts to tighten cautioning practices over the years have rested on the assumption that this could be achieved simply by re-wording, re-casting and re-structuring the guidelines in response to statistical disparity and public concern over the efficacy, equity and appropriateness of cautioning. Such resolution demands that guidelines inform practice and shape and drive behaviour in a pre-emptive manner. If, however, the cautioning guidelines are used as a means of justifying a previous decision to caution that is actually the result of the construction of shared meaning through interactional negotiation by members of focussed gatherings - the synthesis of individual biographically determined notions of deviance, desert, seriousness, remorse and public interest - then such re-structuring measures are doomed to failure in instances in which rules follow action rather than inform and prescribe

them. In addition, disparity of both inter-force and intra-force cautioning rates will remain and, as cautioning rates increase (as individual officers respond to structural and management policy changes and the incremental adoption of a crime-control model of justice) such disparity will also inevitably increase.

The Police Sub-Culture

Policing (is) a job in which end results are diffuse and imprecise and which necessitates discretion, low visibility and an ability to withhold information from senior ranks – the lower ranks construct, maintain and legitimise a definition of policing which seems to be at variance with the ‘real’ context of their work so they unfetter themselves from legal and organisational constraints.
(Holdaway, 1983, p.21)

Holdaway suggests that the construction and maintenance of this sub-cultural definition of policing is a consequence of a number of (often interdependent) activities. The most significant of these include; the control of space, the modifying of legal and policy rules through their application in practice and the sustaining of police sub-cultural symbols and meanings through the interactional exchanges of members.

The control of space

Holdaway found that at Hilton officers sought to actively maintain a clear boundary between publicly accessible areas of the police station such as the front counter and certain parts of the front office and those areas closed to the public – most particularly the charge room and wider custody area. Drawing on the dramaturgical theory of Goffman (Goffman, 1969, pp.32-40) Holdaway points out that open and accessible areas of the police station are ‘space within which a

particular public appearance is managed, shielding a backstage space where a rather different type of police work can be carried out. Hilton's officers routinely preserve the privacy of this backstage area to prevent their work from coming under public scrutiny.' (Holdaway, 1983, p.23).

Unsurprisingly, the shielding from public gaze and inspection that management of backstage space provides, creates 'home territory' (Lyman & Scott, 1967) '...where officers can free themselves from legal and formal organisational rules (and) permits the necessary protection required for the questioning of suspects in the manner that lower ranks think fit....Policing at Hilton is constructed by the lower ranks – which means not that it is concocted out of thin air, but that the various legal and policy instruments available to the staff are modified as the rules in the book are translated into rules in use on the ground.' (Holdaway, 1983, p.134).

What is significant here is that the creation, management and maintenance of such 'home territory', with its plethora of symbolic trappings – the dramaturgical 'set' so-to-speak - serves as both 'background and setting' (Manning, 1988) within which group specific informal activity is not only possible but finds meaning. The unauthorised cell-corridor conversation between officer and suspect during which an agreement is struck that a caution will be forthcoming in exchange for information about accomplices for example, is afforded an element of legitimacy from the suspect's viewpoint because it occurs within the heavily symbolic environment of the custody suite. At the same time it represents a 'safe' conversation for the officer who knows he will not be overheard and thus answerable to anyone save members of his own trusted group to whom such behaviour will be readily understandable and unproblematic. Such activity is informed, bounded and underpinned by this working environment which at-one-and-the-same-time both sustains and is sustained by it in what Manning terms a 'recursive existence'. 'Officers tacitly and formally encode the environment, process it, decode it and socially affirm its salient features. The social

construction of the environment results as the interpretive work of organisational members is accomplished'. (Manning, 1988, p.34). For both Manning and Holdaway then, the everyday work-world of the lower ranks is constructed through the ongoing activities of its members who '... create and maintain a particular sort of environment (within which they then) develop new and often self-serving strategies in response to their own assembled environmental creation.' (Manning *Ibid.* p.35)

In this sense both front and backstage areas of the police station become imbued (as a consequences of the control of space) with purposive meaning for the actors who inhabit them and which inform and boundary the types of action that go on there. They become 'rhetorical devices' (Asma, 1996, p.11) whereby features of the environment, re-enforced by the controlling actors, rhetorically demonstrate the situational context of unfolding interactions that take place there.

However, a backstage area such as the custody suite may, by necessity, need to be transformed, albeit temporarily, into a 'front region' (Goffman, 1990, p.109) during visits by persons such as solicitors and lay visitors as well as senior officers. For it is imperative that these individual's should interpret the situational context within which they find a suspect as one which conforms to the dictates of organisational and legal requirements for such a region of police activity. This temporary transformation from backstage region to front reveals how those able to exert control over space have the ability to engineer 'capsule versions of reality' (Asma, *Op Cit* p.3) which allow them to pursue their projects-at-hand. Such control over situational context is a significant means by which officers are able to manage the definition-of-the-situation held by the suspect, thereby increasing the suspect's negotiational disadvantage during interactional phases of the in-custody process.

The control of areas of the police station and the ability to manage the situational contexts that they provide such that they serve as 'rhetorical devices' during

police-suspect interactions, is an important element of police sub-culture. It is not an explicit process that arises from specific discussion but rather becomes constructed out of the collective actions of the officers who populate such regions. Managing such 'stages' and the meanings invested in them is a learned activity handed from one officer to another during the course of induction into the occupational culture of the police group and sustained by their ongoing efforts to control such regions.

Changing the rules

The range of accounts and interpretations members may draw upon to validate action under the organisation is constrained by its explicit, formal 'charter'. Charter issues (in the form of legal and procedural policies and guidelines) are implicit in and observably affect the numerous decisions on the exercise of discretion made by constables. Charters limit the legitimation of action by restricting the range of legitimisable discourse; only certain motives, justifications and kinds of evidence may be used. (Fielding, 1989, p.78)

Law and policy are not obliterated within the occupational culture but re-worked, refracted in one direction or another as they do or do not resonate with the themes of the occupational culture. (Holdaway, 1989, p.65)

In his paper 'Police culture and police practice' (Fielding, 1989, pp.77-87) from which the above quote is taken, Nigel Fielding argues that previous research into the 'disjunction between legal and social reality' (*Ibid.* p.77) within the operational lower ranks of the police, has overstated the degree to which the 'informal organisation' (the sub culture of the beat policing team) circumvents

authority and cynically works-around official police and legal practice. For him, these formal rules and regulations circumscribe the explanatory discourse through which officers justify their actions, they delimit the range of accounts-of-action such that individual practice is not legitimately explicable in other terms.

For him the organisational charter is a necessary working element of each officer's stock-of-knowledge and as such, will frame an officer's definition of any police/public encounter, co-existing with situationally specific strategies but all the time demarcating the legally and procedurally possible. '...policy is regarded unproblematically as a set of 'super-relevant' instructions or guidelines which inform practice.' (Campbell, 1997, p.66).

Officer's talk about competent practice reveals their awareness that it requires socialisation not only to formal rules but to situated knowledge and to linguistic and para-linguistic devices which facilitate interaction. The origin of the warrant for action is not just in the occupational culture, nor the formal rules rendered by a structure of supervision. A naïve emphasis on the autonomy of constables, based in analyses of the assuredly great discretion of the ranks ignores the manner in which adequate justifications for courses of action are embedded in the dialectic between formal definitions of legitimate practice and informal work practice. (Campbell, 1997. p.86)

There are significant weaknesses in Fielding's position. Firstly we are asked to assume that the inculcation of formal rules, procedures and protocols into an individual officer's policing biography leaves the officer with an integrated but nonetheless 'true' working set of legal instructions and professional policies, unblemished and unfiltered by an individual's culturally given meaning-set. There is apparently, no re-interpretation of law and policy in light of the way the officer comes to think about and make sense of his policing world and incidents within it.

Secondly, Fielding asks us to accept that once digested, these formal rules and regulations attain primacy, shaping and driving decisions by circumscribing justificatory discourse. Thirdly, Fielding posits a structuralist argument that formal rules and guidelines impel action and create the reality within which policing activity unfolds, whereas my experience both as a police officer and researcher suggests that rules and laws are too often considered only *ex post facto* and that a process of version-mapping takes place in which the officer re-frames his account of the incident to interface with formal requirements.

Holdaway, in contrast to Fielding, points to a process of reinterpretation of law and policy as it is transmogrified into street level action by sub-cultural members whose projects-at-hand lead them to re-frame formal definitions to secure a better-fit (or best fit) with their own situational definitions. A worked example of these two positions may serve to better illustrate their fundamental differences.

For Fielding the cautioning 'rules' (as these are made explicit within the appropriate guidelines) are fully integrated with an officer's situationally specific 'knowledge' concerning what the suspect is alleged to have done. Because the officer who makes the decision to caution can only explain his actions through recourse to a vocabulary in which any justification is one which is bounded by the prescriptions of the rules themselves, his decision can only be a synthesis of the formal and the situational. Indeed, the situational is largely understandable only in formal terms.

For Holdaway the decision to caution flows out of the definition-of-the-situation (which will include a definition of both the suspect and his actions) This definition is culturally mediated, that is to say the officer will make sense of; the actions of the suspect; the suspect himself; what a caution means; the rules that govern its use and the appropriateness of such a case disposal method, all from a culturally given standpoint. His actions, as practically oriented resolutions of police problems, will be meaningful to and flow from the cultural group of which

he is a member, and will integrate ‘the themes of (that) occupational group’ (Holdaway, 1989, p.65). The officer’s decision is then an outcome of a cultural re-interpretation of both the situational and the formal, as Lacey suggests, he creates an ‘assumptive world’:

This interpretative, ‘phenomenological’, agent-centred approach has in turn generated insights relating to the existence among those who exercise discretion of ‘operational ideologies’, ‘frames of relevance’, or ‘assumptive worlds’ – systems of values and beliefs which allow agents to make sense of, to impose explanations on, and to order events in the world in which they are operating. (Lacey, 1992, p.360)

To enlarge this debate still further, Clive Norris, in his paper ‘Avoiding trouble: the patrol officer’s perception of encounters with the public,’ suggests that officers engaged in police/public interactions filter situational elements through what he elegantly terms an ‘organisational lens’ – a concept that has great similarity with Holdaway’s refraction metaphor above – here the interplay is not, as with Fielding, between formal and situational elements, but between occupational and situational ones.

One of the key problems with (previous) studies (categorised respectively as individualistic, situational and organisational theories of the reasons underpinning the decision to arrest) is that they fail to appreciate organisational and occupational constraints which shape decision-making. The decisions taken by a patrol officer when dealing with the people involved in an incident, are not based on a neutral reading of the classical sociological variables of age, sex, race and class, or indeed more relevant variables such as a suspect’s demeanour or the legal seriousness of

the offence. Instead, they are filtered through an occupational lens which refocuses the patrol officer's perspective in more immediately relevant and practical concerns. (Norris, 1989, p.90).

The 'occupational lens' is fashioned, honed and polished as a result of the patrolling officer's ongoing interactions with both supervisors and peers in the course of his daily work-world. Through canteen banter, case discussions, reprimands and encouragement, off-hand comments, briefings, humour and debriefings an occupational milieu is forged – a working set of shared meanings, assumptions and collective strategies that cohere to form a practical, street-policing outlook.

Norris asks if any explanation of the nature of a police/public interaction can be understood as a complex interplay between situational and occupational determinants. The patrolling officer defines the situational and procedural context of an incident but does so through the 'occupational lens', that is to say that the officer comes to the incident with a unique policing biography, a biography shaped and informed to a significant extent by the cultural understandings and beliefs of his occupational milieu.

The development of this 'occupational lens' is imaginatively captured by Dick Hobbs in his book 'Doing the Business: Entrepreneurship, The Working Class and Detectives in the East End of London' (Hobbs, 1988). He found that career detectives working the East End integrated both the vocabulary and entrepreneurial outlook of their 'clients', building this into the presentation of self in their work-world both inside and outside the station. With colleagues, their interactions served to underline the distance they sought to preserve between their own work and that of the 'bureaucratically controlled universe of the uniform branch' (Hobbs, *Ibid*, p.198). With informants and suspects their interactions

served to 'align the detective with those for whom the vocabulary and strategies are 'natural'.' (Hobbs, *Ibid*, p.198).

It is this potent cultural influence (the entrepreneurial working class culture of the east end) that determines the presentation of the officer as trader: 'He phoned me and wanted to help, wanted to know what a going-equipped might be worth to him. But he had nothing for me, nothing to tell me. So I says 'Jacko, you come back to me when you've got something to deal. For me it's business. (Hobbs, 1988, p.198)

I became aware of several instances where law breakers were assisted or ignored by a detective and, as a result the officer's potential as a trader was considerably enhanced. (Hobbs, 1988, pp.198-199)

Here, the interpretation of formal rules and regulations meant to govern and place a boundary around police activity is from an entrepreneurial standpoint and police discretion has become a legitimised form of currency with which the officer can strike deals and bargains whilst retaining interactional advantage over 'clients'. Within the sub-cultural group of fellow detectives such action is both meaningful and 'legitimate' as this is understood within the framework of the groups various projects-at-hand. In such circumstances it proves difficult to see how 'Charter issues (in the form of legal and procedural policies and guidelines) are implicit in and observably affect the numerous decisions on the exercise of discretion made by constables.' (Fielding, 1989, p.77)

Avoiding trouble

Proverbially, the lower ranks assertion that 'You can't police by the book' results in the fact that 'You're always in the shit'... The uncertainty faced by the lower ranks results in the need to control as much information as possible. Their freedom from direct supervision creates the climate where information management is made possible.... The principle concern of the officer is the avoidance of negative sanctions. (Norris, 1989, p.91)

What is particularly significant in Norris' account is that the 'culturally defined reading of organisationally and legally prescribed 'rules' (*Ibid*) is in part motivated by the avoidance of what Chatterton terms as either 'on-the-job' or 'within-the-job' trouble (Chatterton, 1978). The former is most obviously manifested as physical injury following an assault or attempted assault on the officer who may fear 'a good kicking', but equally, may also arise as verbal abuse, a challenge to an officer's authority or perhaps a complaint against the officer by a member of the public. The latter 'within-the-job' trouble could range from a loss of trust or loss of face amongst fellow officers, the questioning of supporting evidence by a custody officer, a discontinuance of a case by the Crown Prosecution Service (CPS) or even internal disciplinary measures.

The decisions and actions taken at incidents reflect the concern (of officers) to control relationships between themselves and the various publics on a division, to maintain their capacity to intervene authoritatively in any incident and to preserve their own and other's beliefs that they were on top of the area. (Chatterton, 1981, p.208)

Accordingly, an officer's definition of the unfolding situation (both initially, from the distant standpoint of approach and subsequently during face-to-face interactions with the suspect and with others), together with his written and verbal accounts of actions taken in response, will in-part be motivated by a desire to avoid 'trouble'.

Practical policing, the common-sense orientation of an officer to his work-world is replete with recipes for action which take due account for the need to avoid both on-the-job and within-the-job trouble. This requires a careful balancing act. On the one hand, the officer will want to sustain his ongoing presentation-of-self to his peer group with its associated demand to preserve the normative values of his occupational culture. On the other hand, he must cast his actions in such a way that they meet both organisational and legal requirements and expectations.

It is just these types of perplexing problems and, more importantly, the ways that they come to be resolved by 'front-line' officers that underpin the construction and maintenance of the sub-culture itself. In this sense the sub-culture (or occupational culture or practical policing orientation) is the totality of social interactional responses to the day-to-day problems that confront officers who find themselves thrust into the same work-world. '...subcultures – arise in response to the special problems people face' (Lilly *et al*, 1989, p.72).

The values and practices prevalent in police sub-cultures are not to be dismissed as false consciousness decanted into passive vessels but, in keeping with Cohen's original formulation, should be regarded as an adaptation to the circumstances of police work (Cohen, 1965). As Reiner asserts, recruits 'do not imbibe (sub-cultural values) like parrots but because it makes sense of their experiences (Reiner, 1985, p.186)'. (Fielding, 1989, p80)

What is often forgotten (or at least not made explicit) by commentators such as Holdaway (1983, 1989) is that the construction and reconstruction of a working police sub-culture - as a consequence of the ongoing social interactions of its members as they work to both make sense of their work-world and to resolve both definitional and more prosaic problems of the here-and-now of street based policing activity – is that the rotational nature of operational police teams, a consequence of shift-based ‘relief’ systems, suggests the emergence of shift-based sub-cultures where meaning-sets change as one team (or ‘relief’) ends a shift and another commences. Much of the available literature treats police sub-culture as too monolithic a phenomenon whilst at one-and-the-same-time advocating its dynamic nature. It is as if there is just one universalistic practical policing outlook arising out of the collective activities of all patrolling ‘street coppers’ which is distinct from a similarly monolithic supervisory or management culture – this is too limiting.

The ‘relief-world’ is a world of tightly knit relationships based on shared assumptions, (what Lacey (1992) calls an ‘assumptive world’) mutual trust and collective understanding. It has its own patterns of discourse, its own in-jokes, its own ‘projects-at-hand’ and its own cast of characters. All of these elements cohere to form a relief orientation to the day-to-day policing of the ‘ground’ to be worked and as such this orientation will also be locationally informed. The ‘relief world’ is also a historical world built upon meaningful past episodes that serve to contextualise current happenings. Past ‘victories’ and tales of daring-do as well as stories of current members in previously awkward or humorous positions provide a sense of continuity and family. Each relief ‘family’ will have its own biography and its own grounded stock-of knowledge which will be readily available and drawn-upon by members as they seek to understand and define their work-world. Accordingly, Norris (1989) ‘occupational lens’ comes in a multitude of ‘relief’ prescription-strengths.

Inculcation into the relief-world

The close-knit world of the relief and the physical environment of the canteen combines to create what is known as 'canteen culture'. This is the below-the-stairs attitude to the job and the world which is a far more powerful influence on a police officer's behaviour and beliefs than the official policies devised at the top Canteen culture is 'the total reversal of official culture.... It would be difficult for a young officer to dissent too vocally from canteen values and remain one of the boys. (Chesshyre, 1989, pp.25-6)

On the one hand (police) training school did not incorporate experience of real police work. On the other hand, when probationers did come to have experience of police work, they were little supervised, and there was little or no assessment of whether they were doing the job in the way they had been taught to do it; also they were then subject to the influence of the informal objectives and norms of the relief, which would assume more importance in their eyes than the precepts of the initial training course. (Smith & Gray, 1983, p.256).

For Chesshyre as for Smith and Gray, the 'relief-world' represents a barrier to the correct application of rules, regulations and the policies of management in their pure form, in this sense, the good intentions of (allegedly naïve) training school teachings become devalued and de-railed by the 'below-the-stairs' orientation of relief officers who set about re-socialising the new recruit into the relief-culture. This is too simplistic an explanation of the complex process of passage from training to operational practice. This is so because there are a:

Variety of practices and mundane considerations involved in the determination of the occupational meaning and situational relevance of policies and procedures for ongoing, everyday organisational activity. (Zimmerman, 1970, p.222)

What is interesting for our current purposes is that the new recruit comes to the 'relief-world' very much as a stranger for whom the approached group represents a 'field of adventure' and 'a problematic situation itself and one hard to master. (Schutz, 1970, pp.87, 92-3). He has learnt the rules but has learned little about their practical application. In some ways he faces similar difficulties to the arrested suspect in that initially, his interactional status will prove subordinate to his more experienced colleagues, his ability to enforce a dominant definition of an unfolding situation whilst in the presence of these colleagues will be weak, he must react favourably to elements of the presentation of self of those colleagues which stress their power over him and he must show due deference to their status as experienced operational officers.

Inculcation into the 'relief-world' then is a process of 'reality-oriented' behaviour (Berger and Luckman, 1975, p.196) in the sense that the recruit must begin to define the social reality of the 'relief-world' in order that he may orient his actions to it and adopt it as his 'natural attitude' whereby he can assume that:

I know that I live with them in a common world (of work). Most importantly, I know that there is an ongoing correspondence between *my* meanings and *their* meanings in this world, that we share a common sense about its reality. The natural attitude is the attitude of common-sense consciousness precisely because it refers to a world that is common to many men. Common-sense knowledge is the knowledge I share with others in the normal, self-evident routines of everyday life. (Berger and Luckman, *Ibid*, p.37)

This can only be done within the myriad of face-to-face interactions the new recruit has with his 'consociates' ³ over time. Whilst working alongside a colleague he must attempt to capture the meaning of the context-specific life-world of the other as appresented to him during face-to-face interactions and gradually work towards patterning such interactions in a way that allows the other to adopt typifications of him and his work that cast him in the best possible light.

As he works shoulder-to-shoulder with his consociates he must, at the same time, capture the reflected-upon discrete elements of their shared stream of consciousness of an incident in order that he might grasp the meaning that such incidents held for them and more importantly, the paramount aspects of the incident drawn out of the entirety of the incident and used indexically as meaning pointers for it. In doing so he will gradually build a stock of knowledge and recipes for action that will cohere to underpin his unique policing biography, a biography that will become 'fleshed-out' through his lived-experiences of policing. Gradually, the initially problematic nature of the approached group will be replaced with a natural attitude to the 'relief-world'

The emergence of social organisations depends on the emergence of shared interpretive schemas, expressed in language and other symbolic constructions that develop through social interaction. Such schemas provide the basis for shared systems of meaning that allow day to day activities to become routinized or taken for granted. (Smircich, 1983, p.160)

The process of making sense of training school teachings through there on-the-street application then, is not a sinister derailment of such teachings by cynical 'old-timers' but integrated purposeful social action by probationary officers

³ (Schutz, 1989, P194)

attempting to align law, policy and procedure with a frightening array of ill-defined, perhaps half-seen street-based incidents all within the context provided by the meaning-system of the 'relief-world'. The only way that such an officer can comprehend the meaning of such formal codes is through their enactment in such on the street activity and the only instances of such street-based policing activity is within the day-to-day operations of that 'relief-world.' To suggest that such formal codes become corrupted through their translation into street-based activity is to consider them in abstract.

As with all organisations, the factor which separates the new recruit from the old-timer, is the ability to articulate actions in the light of situationally relevant reading of organisational rules and procedures.....This requires a particular reading of organisational life because, implicitly, it places the concept of culture as the central feature of organisational analysis. (Norris, 1989, p.93)

Concluding comments

In this review, I have suggested that a full understanding of the cautioning process (and in particular the decision-making activities of significant actors within that process), requires an understanding of the meanings which these actors ascribe to the matrix of social actions and interactions which, when taken together, go to make up a cautioning 'event'. From a critical consideration in chapter 2 of the official cautioning guidelines, issued with the intention of informing and shaping police sense-making and decision-making activity, I sought to unwrap the ways in which such formal codes actually become interpreted, both on-the-street, in justificatory discourse within the station and transmogrified within the crucible of meanings formed within the focussed gatherings of significant interactants.

Locating cautioning requires that antecedent processes spanning the point of first contact between officer and suspect and the eventual disposal of the case are

considered, and within the main body of the review I drew on theories of dramaturgy, interactionism and phenomenology in an effort to explain the complex interactional encounters and negotiations that take place within symbolic 'settings' between both suspect and arresting officer as well as between the various police actors themselves, as they seek to define and manage the unfolding situation and the meanings that it holds. Central to this argument is the assertion that both a 'relief' and an individual policing 'biography' is built out of and sustained by the shared day-to-day policing experience of incidents, encounters, problems and resolutions by officers. Such biographies, and the social actions and interactions they spawn, create an occupational culture, a culture that provides the very context within which incidents, actions and interactions become understandable.

In the final section I examined this occupational culture in detail, describing, through the work of Holdaway, its central features and its impact on police decision-making. Major themes explored here include: The management of the dramaturgical setting as a symbolic 'rhetorical device' – an important and influential component of officer/suspect interactions as well as a form of 'home territory' for relief officers, freeing them from the requisite 'management of personal front' involved in the presentation of self in police/public encounters within the publicly accessible areas of the station: The changing of rules through their application in street-based social action – overly simplistic positions concerning the derailment of formal rules and policies through quasi-corrupt cultural action were challenged and a more sophisticated 'occupational lens' theory was put forward. This theme was carried over into the final part of the review dealing with inculcation into the 'relief-world'. Here a largely phenomenological approach was used to tease out the process whereby a new recruit, as stranger to the approached relief group seeks to adopt 'reality-oriented' behaviour as a means of capturing the shared meaning of the approached group.

When taken together, the analysis of the literature and the arguments that spring from it suggest that formal adult cautioning is to be understood not as some formal bureaucratic process, merely the mechanistic working through by officers of edict like guidelines but instead, as meaningful social action understandable only within the context of the work-world from which it springs and only through a consideration of the meanings that it holds for the social actors themselves.

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Chapter 4 – Methodology, access and ethics

Covert Participant Observation

Any group of persons – prisoners, primitives, pilots or patients – develop a life of their own that becomes meaningful, reasonable and normal once you get close to it, and .. a good way to learn about any of these worlds is to submit oneself in the company of the members to the daily round of petty contingencies to which they are subject. (Goffman, 1987, Preface)

Participant observation enables one to go behind the public front of a conspicuous public bureaucracy to witness 'backstage' behaviour when the actors are off-stage, not performing to a public, and not pedalling stereotyped scripts for the benefit of bystanders. In essence the appeal of fieldwork is that it is concerned with real people and that confrontation with people in all their baffling complexity, is a fruitful antidote to a positivist methodology and a natural science model for the social sciences. (Punch, 1979, p.18)

The mere mention of the phrase 'covert participant observation' is usually enough to make most researchers reach for their A-to-Z guide to research ethics. Confronted with the prospect of conducting such research on a powerful institution like the police from the inside, and they would be forgiven for simply reaching for their coat instead and leaving for home early.

But it was in just such a situation that I found myself in 1993, following closely in the footsteps of Simon Holdaway before me, a uniformed police sergeant undertaking doctoral research and seeking to capture, analyse and understand the often subtle day-to-day interactional processes that built and supported the very meanings upon which types of police decisions and actions were based, covertly

observing uniformed patrol officers and the suspected individuals they brought on arrest to the busy North London police station where I was based.

The armour of my initial enthusiasm and initial naivety, coupled with the belief that the trauma and ethical uncertainty that Holdaway had so eloquently expressed back in 1980 would not haunt my endeavours, was soon pierced. Realisations that balancing the recording of pertinent field notes with professional and legal responsibilities to intervene in manifest police malpractice would be no easy or stress free undertaking, a point graphically illustrated one day when I found myself making sketchy notes of an interesting incident within the privacy and solitude of a toilet cubicle, a condition I was later to discover, is amusingly termed 'ethnographer's bladder'.

In my original research proposal I wrote:

'In an effort to capture the processes of interpretation by which actors ascribe meaning to aspects of lived experience, and to understand those meanings themselves, I will, wherever possible, utilise participant observation as a research tool.'

This is by no means an easy or comfortable approach and one which I readily accept is fraught with ethical dilemmas. This method will provide me with an ideal opportunity to see at first hand, the very processes by which such case disposal decisions are reached and the interactions which inform and underpin them'

Looking back on the (almost) two years I was engaged in covertly observing and recording a broad range of conversations and social interactions, non-verbal behaviour and personal reflections on this process during 1993 and

1994, both the excitement and the apprehension I vocalised from the outset existed in equal measure.

The adoption of covert participation was always a theoretical pre-requisite for me. Whilst I understood arguments which turn upon the impact of overarching structures that seek to explain individual action as merely an articulation of the working-out and working-through of the transcendent structural elements bearing upon an individual's given social and political situation, I believed that actors on the cautioning stage had a bigger part to play in the process and a better story to tell. Functionalist arguments relegate these social actors to almost puppet-like status, their actions reifying the very social-facts that manipulate their social strings.

Studies of policing that see it as a response ('dependant variable') to certain universal properties of communities indicated by ecological, economic, political, demographic and legal 'variables' are as misleading as the administrative theory. They overlook or omit the situational and interactional contingencies by which the outcomes are 'produced'. By 'seeing' these outcomes as linear correlates of structural variables, these studies obviate the argument made here concerning the situational and dramaturgical determinants of police work. (Manning, 1977, p.256)

I was also aware that, largely as an outcome of poor access, much existing research on the cautioning of adults (and indeed juveniles) by police has had to satisfy itself with secondary data, typically from official sources. Whilst signposting statistical inconsistency in cautioning practices, these research projects have only been able to hint at the possible normative causal factors underpinning such inconsistency without offering data in support of such arguments. I hoped to be able to expose these factors through the adoption of covert participative research.

My concern was with how decisions to caution or to withhold a caution came to be made in a given situation and how inconsistency might flow from localised constructions of social reality. My belief that the ascription of meaning to offenders' actions was an outcome of both biographically and culturally derived ways of understanding and of looking at the world needed to be tested and I was sure that such processes could not be captured through surveys or through interview, irrespective of how unstructured or deep such interviews might be. The essence of Schutz's 'natural attitude' was that individuals adopt a natural and taken-for-granted orientation to their ongoing lifeworld and their membership of their 'in-group' to which shared and held-in-common recipes of both understanding and action are brought to bear through the handing down of knowledge and through ongoing interaction. It was this natural attitude that I presupposed as being the essential backdrop against which such meanings would find context and such actions and interactions become intelligible and understandable.

the subjective meaning the group has for its members consists in their knowledge of a common situation, and with it of a common system of typifications and relevances. This situation has its history in which the individual members' biographies participate; and the system of typifications and relevances determining the situation forms a common relative natural conception of the world. Here the individual members are 'at home' that is, they find their bearings without difficulty in the common surroundings, guided by a set of recipes of more or less institutionalized habits, mores, folkways, etc., that help them come to terms with beings and fellow men belonging to the same situation. The system of typifications and relevances shared with other members of the group defines the social roles, positions and statuses of each. This acceptance of a

common system of relevances leads the members of the group to a homogeneous self-typification. (Schutz, 1970, p.82)

My research endeavour was to uncover subjects' 'knowledge of common situations' and to reveal the workings of any 'common system of typifications and relevances' held by the 'in-group'. In what ways did 'members' biographies participate within a common group history' and serve to form a 'natural conception of the world'? A quiet, unobtrusive yet systematic observation was needed to preserve this 'cultural community' and that was, in my view only possible through unannounced covert participant observation of the 'in-group' 'at-home' which did not queer the pitch so-to-speak. I would argue that had my research subjects been made aware of my research interest and activities (including the recordings of relevant findings) they would have chosen to act differently in my presence, to 'pedal stereotyped scripts for (my) benefit.' (Punch, 1979, p.18) These theoretical beliefs and the unique position of access to this natural setting are major planks of justification for my adoption of this research undertaking.

Accessing the underbelly

By the time I entered into fieldwork, cautioning as a means of case disposal was already well entrenched within the criminal justice system and in police practice and had by then become something of a political 'hot-potato'. Inconsistency in its application both between forces and indeed even within forces, coupled with increased concern over repeat cautioning, had led the Home Office to publish several amended sets of national cautioning guidelines during that nine year period in an attempt to tighten up its application by the police. None had had any demonstrable impact on inconsistency or repeat cautioning.

My central research question flowed directly from these issues, asking why such inconsistency in the use of cautioning as a case disposal method occurred and why official attempts to tackle that inconsistency seemed impotent. I was most

interested in how cautioning decisions came to be made, at what level and by whom. How officers came to interpret the meanings that offenders' actions held for them within this process and how such meanings (and the decisions that flowed from them) came to be framed by the social interactions of the central actors themselves. As important would be an examination of the ways in which the official guidelines served to inform and shape such decision-making behaviour, where in the process did the guidelines take effect and in what way, if at all, did they create a boundary around disposal possibilities for officers? By adopting a covert form of observation I hoped to capture the full range of subtle verbal and non-verbal interactions, not only between police officers themselves, but also between officers and suspects, officers and the custody setting itself and likewise between the suspect and their place of confinement.

Following the dramaturgical theories of Goffman, I saw the custody area (where suspects were brought by officers following arrest and processed by the custody sergeant) as a 'field for fateful dramatic action' (Goffman, 1972, p.25) and, like Holdaway (1980 1983), I saw this 'inner sanctum' as a heavily symbolic setting, replete with opportunities for the control of meaning, time and space. I anticipated that the trappings and adornments of the custody setting served to buttress its symbolic significance for both police and suspects (although in radically different and indeed opposite ways) providing significant elements of what Goffman (1974) terms a 'primary frame' of meaning within which actors seek to find their own individual answer to the question as to 'what is actually going on here?' and as importantly, 'what is the meaning of what is going on here?' (Manning, 1980, p.272)

If I was to reveal how officers came to make or refuse to make cautioning decisions, how these decisions were sequenced and integrated with the custody process and what degree of fit these decisions had with the official 'Home Office National Guidelines on Cautioning' that were intended to direct and prescribe them, I had to understand the ways in which the very meanings upon which those

decisions were based became constructed through such social interactions. It was part of my hypothesis that this process of making sense of and attributing meaning to a suspect's behaviour, attitude and demeanour (both on the street and subsequently within the station) was infused with the shared and taken-for-granted assumptions of the occupational culture, that officers viewed the incident and the suspect, and filtered situational elements of each, through what Norris terms an 'occupational lens' (Norris, 1989, p.90).

I needed to observe this process firsthand in its natural setting in a way that did not interfere (as far as was possible) with that 'taken-for-granted' attitude and potentially terminate, disrupt or redirect it. I wanted to be present when officers discussed the case and the suspected individual, whether that discourse took place in the suspect's presence or not. I wanted to see how suspects were treated, how they were spoken to, whether or not the suspect was invited to explain his version of the event and by doing so negotiate a different set of meanings for his behaviour than that which had led to his arrest. Were suspects offered legal counsel and if so, how and when? Were they supported emotionally or did they have their vulnerabilities and fears used as a lever to manipulate them? As such my theoretical stance demanded a form of covert observation, the 'natural attitude' of the central actors on the cautioning stage could not, I believe, be assured in any other way.

In terms of my participation within that process, like Holdaway before me, I was at the time of the research (and still am) a serving police sergeant and accordingly my participation was assured.

I found myself in a situation where I could probe the occupational culture in a unique manner. (Holdaway, 1980, p.323)

Holdaway chose to ground his research in the direct observation of day-to-day policing because the methodological commitments of

ethnography to naturalism, empathy and to capturing everyday theorising are most suited to an analysis of police culture. (Jupp, 1989 p.59)

The occupational culture of the rank-and-file officer is notoriously difficult to access let alone disappear within such that the researcher's presence goes unnoticed. Hobbs notes that: 'I was marginalised by my status as a non-policeman' (Hobbs, 1989 p.11) and Chesshyre points out that: 'However familiar a figure I became, I could never be sure that my presence was not affecting the way police officers behaved.' (Chesshyre, 1989)

This was also the experience of Smith and Gray who reported this comment from a police officer whilst researching the work of the Met between 1980-81: 'If there are police officers who beat people up in the cells, they're not going to do it while you are watching' (Smith & Gray, 1983, Part IV p.11)

The fact that the police are a powerful elite well versed in the dynamics of control and with a vested interest in shielding the workings of their operational culture from outside analysis makes access to that lifeworld both more difficult but at the same time more important. Few would argue that police accountability is not a good thing, but without access to the inner workings of that police culture, meaningful accountability is impossible to secure. Outcomes such as arrest, charge, caution and conviction statistics shield from view the very social processes by which those products are realised and we are left wondering whether the police followed statute, policy, guidelines and 'proper procedures' in their generation. Holdaway used these central arguments of unique access, undisturbed natural attitude and the exposure of the actual workings of a powerful elite as a means of enforced accountability as the primary ethical and theoretical touchstones of his covert participant observation of operational patrol officers. I rest my research endeavours on the same theoretical and ethical tenets and would cite the paucity of ethnographic research in this area as further justification.

The custody area, where cautioning decisions are made and find meaning is very much a place that Goffman terms a 'back region' where actors can feel comfortable to behave in more natural ways, freed of the need to wear their public mask, a zone which Lyman and Scott refer to as home territory; 'where regular participants have relative freedom of behaviour and a sense of intimacy and control over the area' (Lyman & Scott, 1967, pp. 236-249).

Secure from the presence of strangers the charge room is a permanent 'home territory'. For the lower ranks the station *is* the charge room, a place where control can be maximised. (Holdaway, 1983 p.27)

As a central participant within this home territory my access was easy, natural and absolute and my presence routine, accepted and unremarkable. I not only had full opportunity to go to any part of the custody suite at any time without forewarning as a matter of routine, but also faded into the background when my presence was not directly integral or germane to an officer's activities within the suite. Few conversations took place outside of my hearing, nor actions outside of my view. Accordingly, an officer's orientation to his/her workworld within the custody suite, within which I was an inhabitant, was a natural orientation, and things said and done whilst this home territory was secured against the 'invasion' of strangers such as solicitors and lay visitors, could be held to be manifest instances of the operational culture as it was constructed and maintained by interactants.

The administration or refusal of an adult caution is an outcome that, if it is to be meaningful, cannot be abstracted from its interactional history. Case outcomes cannot be seen as merely the logical product of certain types of offending behaviour which have simply passed through a predetermined quasi-legal process, itself informed by and based on police standard operating procedures and external rules or guidelines. At every decision point there is human endeavour, an

unfolding process of meaningful inference, of framing, interpreting, keying, defining and projecting that shapes and ultimately directs the decision made. Such ascription of meaning to action by police whether on arrest by the arresting officer, during reception by the custody officer, in a cell corridor by the investigating officer or in the fingerprint room by any officer, may or may not be driven by policy, law procedure and guideline. Exposing this inferential activity is essential and makes such decisions meaningful and understandable by re-locating them within the frames of meaning in which they arose in the first place.

This interactional history requires that any significant discourse between interactants and/or instances of observed behaviour become properly contextualised, their setting described and their incident located within the custody process such that any sequencing issues are included that might add to an understanding of the action being examined. It is only through careful observation and recording that such richness can be captured and context provided, it is only through unannounced and ongoing covert participant observation that such detail can exist at all. This represents what I would term a process justification for the adoption of my chosen methodology which seeks to avoid 'thin', overly abstract, decontextualised and thus meaningless data that does nothing to uncover the decision-making processes as these occur within the cultural work-world of the police station custody area

It is important that the interdependent nature of this methodology is made explicit. It is only by virtue of its covert nature that such observation and data collection of 'natural' sense-making and decision-making activity is possible within a symbolic setting that is normally inaccessible and shielded from public inspection, and it is only through capturing the ongoing actions and interactions of key individuals within that setting that the workings-out of occupational culture at the level of decision-making can be exposed.

Into the ethical jungle

These were the first field-notes that I made and they serve to convey the tension involved in covert observation and field-note compilation:

I feel quite apprehensive, the thought of making surreptitious notes of my observations and of conversations and comments made by my colleagues seems disloyal. I realise that these thoughts arise from the impact of the police culture, a police loyalty, esprit de corps so-to-speak. At the same time I realise I inhabit a unique position with regard to this research endeavour. I have unparalleled access to my subjects and can observe them within the very setting which gives their actions meaning.

My plan is to develop an awareness of those moments when I can justifiably and safely think about situations from an observational point of view, casting an informed eye on proceedings and capturing, as far as is possible, relevant observational data. This also requires that I recognise that there will be times when, owing to workload, the complexity of the case, the need to ensure safety and security for others and the need to preserve and secure evidence dictates that I will become wholly consumed by my custody officer role. Perhaps there is a form of continuum here at one end of which I will be operating wholly as a participant and at the other wholly as a researcher and observer, participating only inasmuch as I will be present as a situation unfolds.

GEN0001

Me 'and does he admit the offence? Has he said he did it to you?

PC (laughs) when we explain he's up for a quick caution there'll be no problem about that sarge'

TMWC001

'It's gotta be a caution ain't it, it's such a piddly amount of gear it ain't worth the effort of all the paperwork'

When talking about a case of shoplifting during which the suspect had stolen a small amount of cosmetics.

I have made a couple of discrete observations and I now realise certain things about the processes involved. It is going to be vital that I record details of each conversation soon after its observation. I cannot record by tape, it is too obvious. I would be too aware of it and the prospect of discovery would itself be an unthinkable outcome with loss of trust, suspicion, rumour. I will need to make written notes and have decided to do

these straight onto my laptop. This will not arouse suspicion as people are used to seeing me using it in connection with my preparation of manuscripts for publication.'

TMWC002

These passages from my field-notes articulate a number of points of tension that became immediately apparent. The sense of disloyalty and of breaching a trust; many of the subjects for my research were colleagues, officers with whom I had worked closely for many months and with whom I spent large periods of my working day. The things they said and did rested on an assumption that I was an integral part of their safe home territory. They assumed that my understanding of situations, cases and suspects differed little from their own, that I had a similar

‘police outlook’ to them and would see their ascription of meanings to circumstances as largely unproblematic. I was a significant member of the ‘in-group’ and had played my part in the maintenance of the shared meaning system that informed our daily round of activities.

Had they known that I intended to record their conversation and actions, it is very likely they would have acted differently towards me and, within my presence, towards others (particularly suspects). It was precisely this fact that made a covert approach so crucial if I was to capture their natural orientation to this setting and towards the people who populated it. This realisation fed into another tension, of being caught. As Homan points out (1991, p.113) ‘The covert researcher suffers excessive strain in maintaining the cover. More simply, the risk of being caught is a major and distracting concern’

... as a covert researcher of the police I was documenting the work of people who regarded me as a colleague. The risk of being found out was always present and I had to be sensitive to any indication that others – sometimes friends- might know what I was doing. I kept shorthand notes on a scrap of paper in the back pocket of my trousers: if I had to leave the station or charge office to make notes, I listened for approaching footsteps. (Holdaway, 1983, p.10)

Fear of exposure was a constant tension throughout the research endeavour and I became quickly adept at playing down curiosity and enquiry by excusing my work on my laptop as the preparation of a manuscript for publication. I had at this time already co-authored a book on facilitation skills for adult learners and this proved an easy pretence to maintain. Officers soon became used to me tapping away at the keyboard and early curiosity quickly faded, of course there was always the exception:

An officer looked over my shoulder today as I was reviewing my field-notes and I was unaware of her presence. She asked me what all the speech was on the screen and had clearly begun to read one of the records. I quickly suggested that it was just part of my new book on equal opportunities, a case study. She shrugged and walked off clearly unperturbed. The encounter left me a bit shaken and upset that I had had to compound the hidden nature of my research and field-notes with lies in order to avoid exposure. I know officers tell lies all around me, to suspects, to witnesses to me and to each other, but can I justify my position on this basis?

GEN0062

Both the sense of disloyalty and a fear of exposure stemmed from a natural sense of deception. This deception arose through a degree of misrepresentation, in that, my ‘researcher self’ was necessarily hidden from view behind my ‘custody-officer self’, I was constantly required to engage in ‘impression (or front) management’ (Fielding, 1993, p.158). Also, I was attempting to capture, through covert observation and hidden record keeping, verbal and non-verbal behaviour without the informed consent of officers, suspects or others such as solicitors. It was clear that I could not explain my research activities to either suspects or to their legal representatives without making my endeavours apparent to the police officers as well and thus exposing my entire research project. Although these encounters and the interactions they spawned took place within a quasi-public setting (that is an institutional rather than a private setting) I asked myself whether I wasn’t breaching individual’s rights to privacy.

Informed Consent

The consent I *had* obtained was actually quite open-ended, allowing me to examine custody records and other official documents and talk with and, if

needed, interview those involved in the cautioning process. But this was the authority of a gatekeeper (in my case the Chief Superintendent in charge of my police station). In any event this authority did not extend to the covert observing and recording of conversations and action. It was my belief that had I sought such permission it would not have been forthcoming. The issue of informed consent is a central ethical issue.

Homan suggests that whilst critics of covert methodology make much of the subject of informed consent, often it amounts to no more than a cursory explanation of the research aims at the commencement of often lengthy observations, during which respondents quickly forget why the researcher is there and that what they say and do is on the record. (Homan, 1991 p.76) Indeed, Homan suggests that it is common practice for researchers to actively engage in forms of behaviour and to enter into relationships with respondents for the purpose of encouraging them to forget the formal and recorded nature of their interactions.

Some of my most valuable data have been collected when my respondents have opened up on social occasions, having forgotten about my research involvement. (Barbour, 1979 p.9)

Hobbs writes in a similar vein about his efforts to blend in during his study of East End detectives:

In pubs and clubs I had to blend in sartorially; I could not be obtrusive. As a consequence I now possess a formidable array of casual shirts with an assortment of logos on the left breast.....for the most part I behaved as though I was not doing research. Indeed, I often had to remind myself that I was not in a pub to enjoy myself, but to conduct an academic enquiry and repeatedly woke

up the following morning with an incredible hangover, facing the dilemma of whether to bring it up or write it up. (Hobbs, 1988 p.6)

In both these instances, and I suspect countless others, the informed consent, so often demanded as a research pre-requisite proved somewhat cursory. In each case it was sought only at the outset or prior to a prolonged period of observation. It is also likely that not all of the subjects with whom the researchers subsequently came into contact will have been present at and privy to the initial discussion when informed consent was sought and given. Furthermore, neither Barbour or Hobbs make it explicit whether the informed consent they obtained was from the individuals they researched or from a gate-keeping supervisor and neither seemed to have an explicit protocol for assuring that the rights of each individual subject to informed consent had been safeguarded as an ongoing practice. Indeed, Hobbs points out that whilst he did approach and speak with senior officers on an official research footing:

My analysis of detective work has been limited by the decision not to seek formal access to the police organisation. The degree to which detectives exposed both themselves and the nature of their work to me depended largely on my ability to strike up a rapport with individuals. (Hobbs, 1989, p.6)

It is unsurprising then to find that researchers in the field, on realising the quality of data that can arise when their research role had been largely forgotten or played down and they have become accepted as a new member of the 'in-group', then work actively to conform to and foster such membership. At the same time, Hobbs also flags up an additional benefit to arriving in a new and strange group as an accepted honorary member, namely that established in-group veterans are keen to explain the 'folkways' and 'the cultural pattern of group life' (Schutz, 1964, p.92) in-order to 'properly' frame the meaning of group action for the new arrival.

However, creative and economical use of informed consent as exemplified above, does not in itself justify not seeking such consent in the first place, and good reasons are needed to adopt covert methodologies that may threaten an individual's right to privacy and protection from deception.

The British Sociological Association (BSA) Statement on Ethical Practice in Research (BSA, 1999) states that:

There are serious ethical dangers in the use of covert research but covert research methods may avoid certain problems. For instance, difficulties arise when research participants change their behaviour because they know they are being studied. Researchers may also face problems when access to spheres of social life is closed to social scientists by powerful or secretive interests. However, covert methods violate the principles of informed consent and may invade the privacy of those being studied. Participant or non-participant observation in non-public spaces ... should be resorted to only where it is impossible to use other methods to obtain essential data. In such studies it is important to safeguard the anonymity of research participants. Ideally, where informed consent has not been obtained prior to the research it should be obtained post hoc. (BSA, 1999, p.3)

The police are clearly a 'sphere of social life (that) is closed to social scientists by powerful or secretive interests.' and whose operating practices represent 'essential data' My covert research methodology supported and ensured continued quality access to this closed sphere of social life with the primary objective of collecting just such quality data from 'research participants (who would certainly have) change(d) their behaviour because they (knew) they (were) being studied' (BSA, *Ibid.*) In addition, all recorded discourse and noted behaviour was non-attributable from the first instance ensuring the anonymity of all subjects and as I quickly

realised, recalling the exact individuals who had made specific comments years and indeed even months afterwards would have proven impossible.

The issue of post hoc informed consent was problematic for me at the personal level as I was concerned that my ability to retain a sound working relationship with my colleagues and to sustain a tenable work-world for myself would be threatened by such post hoc disclosure. I was unsure as to whether my colleagues would see my activity as a betrayal and feel deceived by my not having sought their prior consent and that I would gain an unenviable reputation as some form of academic whistleblower. There was also the question of ascription, as I could not have shown individuals the things I had noted about them had they requested this owing to my non-attributable coding system of note-taking. Much of this difficulty arose out of a desire to protect myself and retain a sense of professional integrity through continued interaction with colleagues as one of the custody team and a fair minded if somewhat demanding and by-the-book sergeant.

Sheptycki (1994) differentiates between the depth and quality of access to police work that researchers have and continue to enjoy, categorising between 'inside-insiders, inside-outsiders, outside-insiders' and so forth. As a serving police officer undertaking covert participation observation as part of an external doctoral thesis (i.e.: not undertaking officially endorsed and sponsored research on behalf of the organisation), I would be classified as an outside-insider able to overcome the access difficulties and barriers that non-police researchers typically face. But beyond the issue of access, as an outside-insider I enjoy both an academic understanding of the theoretical basis for my research and an insider's access to the 'in-groups common stock-of-knowledge' and as a result a first hand grasp of their typical 'taken-for-granted assumptions and frames of meaning and understanding' (Schutz, 1964, Goffman, 1974)

Analysing the research of Punch who, in 1985, undertook to examine corrupt practices by patrol officers in the Amsterdam police, Jupp raises a number of

justificatory positions for the adoption of covert observational methods with regard to the researching of powerful yet closed organisations such as the police which largely build upon the ethical directives of the BSA:

... where the subjects of inquiry have general rights, duties and obligations over and above those of everyday citizens, as is the case with the police, then the moral right to be free from social investigation is correspondingly reduced. What is more, where groups with such enhanced rights duties and obligations have an important commitment to decision making based upon the principles of openness and impartiality – as is the case with professional groups, including police, in the criminal justice system – the power of this argument (for adopting covert methodologies) is increased. It is often the case, as illustrated by Punch's research experiences, that those enhanced rights and duties and commitments to openness and impartiality, go hand in hand with the development of practices of mystification, and even blocking, to protect individual and group interests from the prying eyes of researchers. (Jupp, 1989, p.156)

Berremman (1972) and Hobbs (1988) offer two alternative but equally interesting justifications for the adoption of covert research techniques. For Hobbs, (whose research position I introduced briefly above), researching East End detectives and their adoption of entrepreneurial techniques in the management of their cases, witnesses, informants and suspects - covert methodology followed a chameleon like fading into the background and the building of close friendly relationships with respondents from both sides of the crime divide:

I was pursuing an interactive, inductive study of an entrepreneurial culture and in order to do so I had to display entrepreneurial skills myself. Because of my background I found nothing immoral or even unusual in the dealing and trading that I encountered. However, I do

not consider the study to be unethical, for the ethics I adhered to were the ethics of the citizens of the East End. (Hobbs, 1988, p.7-8)

In this vein, my own covert endeavours would become justifiable the first time I uncovered instances of the withholding of information from a suspect that he/she was entitled to know which, if known, would have re-oriented the direction of a case (the admission by an officer that a caution had been chosen as a case disposal method, not because of a philanthropic desire on the part of the officer to divert a first time offender from the stigmatising and labelling effects of the criminal justice system, but because of weak or inadequate evidence, for example).

For Berreman, justifications arose from the natural place of front-management within our ongoing presentation of self in everyday life within which deception is a central requirement. We all hide aspects of self by adopting different masks (impressions of self) for different situations. In the case of covert research the concealment of a research self behind a participant self is no different, nor is it more morally problematic, than the concealment of any other of our multiple 'selves' in pursuance of the impression management we indulge in on a daily basis.

I have already considered arguments that turn upon the quality of the resultant data in terms of capturing and exposing what Schutz terms the natural attitude of subjects to their lifeworld, an argument that positions covert participant observation as a theoretical pre-requisite, but this is only half the story. My main ethical justification is that of increased organisational accountability and with it increased protection for the rights of suspects. In the adoption of this defence I directly follow the arguments of Simon Holdaway who states:

... the necessity of covert research is strengthened by the central and powerful situation of the police within our social structure. The police are said to be accountable to the rule of law, a

constitutional feature which restricts their right to privacy, but which they neutralise by the maintenance of a protective occupational culture....any effective research strategy would have to pierce that protective shield. When such an institution is highly secretive and protective, its members restrict any right to privacy they already have. It is crucial they are researched. (Holdaway, 1980. p.325)

The police can only be held accountable and suspect's rights protected if the routine and culturally driven practices of front line officers become exposed and examinable. It is often assumed that, whilst much of police work is hidden from public view and scrutiny, overarching rules and regulations, laws and guidelines will nonetheless serve to direct and control police action and help keep the police honest and, through such mechanisms, accountable. What has not been clearly established is whether such edicts integrate with, shape and impact directly on the lifeworlds of individual officers.

For the purposes of my research project the question can be re-framed: Do the 'Home Office National Cautioning Guidelines' have a direct impact on the way that officers ascribe meaning to an offender's actions? Do they underpin, shape and drive decision-making concerning a suspect's guilt, attitude, demeanour, level of remorse and just deserts? Officially it is presumed that they can and they do, my research suggests that such guidelines are more often used in a process of ex post facto justification, providing a formal and official sheen (through carefully worded and constructed reports) to what is typically, culturally driven 'practical street coppering'.

A Professional Dilemma

Over and above the ethical implications of undertaking covert participant observation were professional considerations that arose as a consequence of my

position as a police sergeant and a custody officer. These professional considerations had a significant impact on the nature of the research project, boundarying its reach and at times its depth whilst raising questions of priority and focus for me. The question as to whether I was a police sergeant or a researcher was quickly answered, First and foremost I had to be a police officer and custody officer, protecting the rights of suspects and discharging my professional and legal responsibilities. My day job had to take precedence, any alternative scenario would require that I neglected my duties and failed to deal with each case in a detailed, careful and proper manner.

As a uniformed police sergeant I had a supervisory responsibility for officers working under my command. In the case of work within the custody area itself this meant that I was directly responsible for the behaviour, practice and procedures adopted by officers who brought suspected individuals to the police station on arrest. Occasionally, officers of and above the rank of sergeant would arrest suspects and bring them before me, in which case I had no supervisory role in their work over and above maintaining the security of their arrested persons once discharged into my care. But arrests by supervisors were rare and the vast majority of arresting officers were constables and thus a supervisory responsibility.

In addition to my supervisory duties as a sergeant, I had a complex array of statutory obligations prescribed both by the Police and Criminal Act 1984 (PACE) and by their associated Codes of Practice. Chief amongst my legal requirements was the authorisation of detention of a suspected individual following due consideration of the facts-of-the-case as these were explained to me by the arresting officer, together with the earliest practicable release of the detained suspect either following caution, no further action summons or on bail following charge and pending a court date for hearing.

Other responsibilities included; extension of suspects rights to both legal representation and the alerting of family as to their whereabouts; searching and handling both suspected stolen or prohibited items and personal property; the ongoing security of suspects within the custody suite itself; the monitoring and timing of detention; ensuring requests for interview as well as requests for the movement of the suspect beyond the custody area for such things as identification, movement to court, and searches of home addresses and other addresses all complied with PACE requirements.

These obligations and duties had to be discharged in a timely and professional manner, ruling out the possibility of contemporaneously recording relevant discourse, or noting details of interesting actions and interactions. I realised from the outset that at best I would be forced to make such field notes as soon as was reasonable but at a moment that was free of my other duties, obligations and supervisory responsibilities. This meant that at busy times some interesting data simply became lost, as my inability to record it soon after it arose rendered it lost from memory in any reliable fashion, at other less hectic times, I was able to make such field notes reasonably soon after their occurrence and rarely more than an hour or two after they had occurred.

The compilation of field notes following any form of delay will always throw up questions as to the accuracy of the note-takers memory following the effects of erosion of short-term recall. Having been tested on this subject many times by defence advocates at magistrates courts, crown courts and The Old Bailey I can offer here only that which I said in court, that the recording of words used and actions taken by subjects were made as soon as was practicable and represent as near a verbatim transcription as I could ensure and where this has not been possible, an accurate and adequate summary of the incident in question. As a police officer I can at least make claim to being a trained and professional note taker, how much credence the reader of this research places on such a claim is outside of my control. I intend to deal with the larger methodological question of

exactly how I came to select certain instances of action and interaction between officers and between officers and suspects to be worthy of recording as field notes, whilst deciding that others were outside of what Schutz terms my 'zone-of-relevance', later in this chapter.

Such time constraints also had an impact upon how much I could realistically record concerning any given incident. As far as was possible I tried to record sufficient background and foreground information to enable me to place the actions or interactions I observed in context, to capture both their dynamics and the frames of meaning being used, exposing actors projects-at-hand and the means by which they sought to ascribe meaning-to-action in pursuance of such projects. Sometimes I was forced to record only the sketchiest of field-notes representing only sound bites of a much longer and possibly more meaningful discourse between actors, at other times I was able to flesh-out conversation, providing a richer word-picture of an encounter, or gathering. But such constraints are the stuff of real-world ethnography, research was very much the gaps in the pavement of my ongoing workworld and not the paving slabs themselves.

Another significant impact on my research of such professional and statutory duties, responsibilities and obligations occurred when instances of police malpractice arose. On the one hand such moments clearly represent valuable ethnographic data, representing an aspect of the policing lifeworld as it unfolds, on the other such action represents a supervisory imperative requiring me to take action.

Holdaway gives voice to some of these issues in the following passage from his book 'Inside the British Police'

During my first days of police duty (as a covert participant observer) I asked myself what I would do if ...an officer hit a suspect in my presence or some other indiscretion took place. I

was, I kept reminding myself, not simply a sociologist but a sergeant with supervisory responsibilities. (Holdaway, 1983, p.6)

and this from my own field-notes (case TMWC003)

An overheard conversation between a PC and a suspect held in a cell corridor..

'Listen, I'm busy and you want to get home, you just sign to say you accept a caution, it gets rubber stamped by the duty officer and that's it...a slap on the wrist 'know what I'm saying here, neither of us need the hassle of a drawn out investigation.'

This case has highlighted the main ethical problem I knew I would face. I have a supervisory responsibility with regards the behaviour and practices of all officers who pass through the custody area with prisoners and who undertake investigation into cases involving arrested suspects. Equally, I have a statutory responsibility to ensure that cases are conducted fairly and that no undue pressure or inducement is brought to bear.

The need to balance observational integrity with these professional obligations is a significant issue within this facet of the research. A possible outcome to intervention is that the very behaviours I am hoping to capture and record will become less likely to happen as word gets round that I won't have any truck with such forms of police practice. Officers will make sure that things are by-the-book in cases where I am the custody officer. On the other hand, if I simply turn a blind-eye, am I not through inaction, condoning malpractice and failing as a supervisor?

I will try to confront this and similar issues in a way that discharges my statutory and professional obligations but which is perhaps sufficiently low-key to ensure that I don't lose future data through suspicion.

TMWC0003

Throughout the two years I spent researching cautioning as a participant observer I had on many occasions to take officers aside and speak with them about the ways in which they had acted or had spoken with and about suspects both within and outside their presence. An examination of the field data I collected over that time will quickly show some of the informal conversations, off-hand comments, offered inducements, threats (both subtle and not so subtle) and instances of side-stepping, ignoring or misinterpreting of procedure and guidelines by officers over this time. I took the view that whilst it was clearly my responsibility to deal swiftly and effectively with such malpractice, this in no way prevented me from noting it as part of my ongoing research, after all, the event had happened and me not noting it would and could not undo what had been said or done. Beyond this I saw no purpose in adding additional supervisory commentary to my field notes in such circumstances. This I felt would have added nothing to the quality of research and would have simply added further to my note taking requirements, stretched as they often were by time constraints and interruptions.

That I did step in and supervise in such instances definitely had an impact on the occurrences of such activity and as a consequence on my research. Unsurprisingly, officers who had received such words-of-advice from me tended to watch themselves in my presence, consequently they withdrew from my research field-of-view, often but not always for some time. Had I chosen to ignore much of what I saw, heard and recorded in my field notes, the number of notable instances of the type I collected would have been many times more but I was not prepared to do this. By meeting my supervisory duties fully and unequivocally I was able to minimise

the tension that comes from undertaking covert research in such a participatory manner.

Selection of Data

Within the work-world of the custody area a great deal of activity takes place only some of which necessarily leads to consideration of a cautionable outcome. Furthermore it is clearly not always possible to anticipate which cases when first introduced on arrival at the police station will culminate in the offender being cautioned or considered for a caution for the alleged offence. The way that an officer makes sense of and interprets for others the meaning of an offender's actions or attitudes will often illuminate the dynamics of both formal and informal police decision-making irrespective of the case outcome, as will conversations and comments between officers and between officer and suspect about cases, offences and types of offender. It is not possible nor even desirable to record everything that takes place within the custody area, what is needed is an informed selection of relevant data that bears upon the issue of how such cautioning decisions come to be made, by whom and through what interactional process.

Throughout my research I necessarily made choices, often unconsciously, as to what was relevant for my research purposes and what was not. I wanted to capture the 'natural-attitude' of officers to their lifeworld and from that to expose the taken-for-granted assumptions that flow from this orientation and how police decision-making can be located within such a context. An obvious criticism exists that I simply selected from a sea of action and interaction only those instances that best illustrated my premises, choosing to ignore those that undermined my main thesis. I do not believe that I did this, instead, I tried at every turn to note discourse, action, comments and opinions as these seem to touch upon the sense-making and decision-making activities of officers with regards to case disposal outcomes. That I was constrained in this endeavour by time and professional and legal obligations I have already explained above and this necessarily impinged on my ability to record

as much as I would have liked. Sometimes quality data was lost in favour of other exigencies at other times it was dealt with only superficially for the same reasons.

I have come to realise that the nature of the observational task is complex and not always easy to fulfil. I try hard to stay alive to the nuances of action and the potential of interaction, I keep an ear open for exchanges between officers and suspects and for when officers are discussing cases or suspects together. My central focus on cautioning is not always easy to anticipate early in the history of any case, what might start out as a seemingly serious case may subsequently turn out to be far less serious and both talk and attention may then turn to the administration of a caution. This process occurs in reverse, as facets of a seemingly straight-forward case develop revealing serial offending, the involvement of accomplices or significant amounts of stolen property.

Clearly I cannot record everything, the custody area is rich in action and often busy so the question becomes one of selection and to what extent that selection is partial? What are the ascriptions of meaning that I myself indulge in when deciding what conversations are worthy of recording and which encounters are relevant? My general rule throughout has been to try and capture aspects of all cautioning activity that I become privy to or comments made and conversation heard that focus upon cautioning. I think I have done this satisfactorily, although some notes are brief often owing to pressures of work and other interruptions, or to only passing or fleeting mention of cautioning within other conversational contexts.

I must acknowledge that field-notes on more general happenings may be vulnerable to the criticism that they are simply episodes of a flow of activity from which I have chosen to extract instances that

serve to illuminate my research presumptions and which support my theoretical biases. It is certainly true that my interest in the theories of phenomenology, symbolic interactionism and Goffman's dramaturgy create a field of focus but I find it impossible to ignore the manifest social orientation of the verbal and non-verbal behaviours I witness and compelling to seek to capture such processes within the phenomenological context.

GEN0063

What must be emphasised however is that the selection of data was a product of my biographical situation within the field of research. My professional, cultural and academic frames of reference were inevitably containers of meaning from which the relevance of research material was drawn. To say that I set out to capture phenomenological, dramaturgical and interactional elements of both suspects' and officers' lived reality, and how these came to have an impact upon the dynamics of police decision-making, is to lay out my pre-research criteria, in retrospect this proved to be a bold plan which I only partially realised. Whether the data is sufficiently rich to recreate the complexities and subtleties of human interaction within such a controlled and heavily symbolic environment will be for the reader to decide.

It is necessary at this juncture to examine some theoretical components of Schutz's phenomenology (Schutz, 1967, pp.45-75) in some detail in-order to move forward to a more critical analysis of the ongoing data selection model I adopted within my research and by doing so provide some form of epistemological basis for such choice-making.

From a phenomenological standpoint the ascription of meaning to action and experience is a reflective process. My lifeworld exists at two fundamentally different levels. At the first of these levels it exists as my ongoing flow or stream-of-

consciousness (Schutz more typically terms this the stream-of-duration) within which undifferentiated and unexamined experiences flow-by me, I sense the passage of time and am aware of an unbroken series of unfolding happenings that I identify as my lived experience but these are as yet not meaningful lived experience. At the second level exist the very meanings that this stream of consciousness holds for me, that is; my meaningful lived experiences, discrete reflected upon experiences. But such meanings are only available to me through retrospection, the here and now of my unfolding consciousness being intrinsically 'pre-phenomenal' (not yet examined and identified as phenomena). To capture the meaning of an experience within this stream requires that I turn my attention back on past happenings whether immediately past or some time ago, and through such attention, lift them from my stream of consciousness making them discrete and thus examinable experiences and thereby ultimately meaningful.

Two important theoretical issues arise from this. Firstly the lifting of an experience from the stream-of-consciousness through reflective attention renders it meaningful by virtue of its location within an existing schema of typifications, or where it does not fit, as problematic until a satisfactory typification or extension of an existing typification can be found to accommodate it. In the first instance, where its fit within an existing scheme of typification is assured it will exist as taken-for-granted and will represent further evidence of the effectiveness of my existent stock of knowledge. In the latter instance, where it cannot readily be located within such a schema, my stock-of-knowledge is found wanting. If on this basis I cannot achieve a project-at-hand I may chose to expand my stock of knowledge to accommodate the problem in-order to achieve this project. If it does not impact on this or other projects I may chose to ignore it as an irrelevance.

Secondly, The directing and focusing of this 'cone of attention' in the retrospective gaze upon my stream-of-consciousness is very much a product of my current purposes-at-hand, in Schutz's terms, I modify my attention to progress my projects-at-hand. My attention thus represents the reach and depth of my retrospective focus,

to use the vernacular, I turn my attention upon something or someone (as it exists as a set of as yet undifferentiated experiences in my consciousness) and by doing so select from my stream-of-consciousness those experiences for examination and interpretation (rendering them meaningful) that seem relevant and of interest to my current purposes.

Accordingly, the meaningful lived experiences of my lifeworld within the custody office whilst I am oriented to this lifeworld in my policing capacity as a custody officer will be those that allow me to make sense of what is going on in terms of my various custody and supervisory in-order-to motives. I select from the stream-of-consciousness of this workworld experiences that integrate with and support my tasks of detention, evidence, legal counsel, security and so-forth. As I am accomplished in this, having, through past experiences built up a stock of knowledge that rendered previous problematic experiences in this regard meaningful through the widening of my then inadequate stock-of-knowledge, I can now treat much of these experiences as taken-for-granted. It is this very orientation that allows me to adopt what Schutz terms the natural attitude.

Of course, what is taken for granted today may become questionable tomorrow, if we are induced by our own choice or otherwise to shift our interest and to make the accepted state of affairs a field of further enquiry. (Schutz, 1970, p.111)

This process is crucial to a subsequent consideration of data selection, Whilst my stream-of-duration within this workworld contains all the possible experiences available to me through my senses, that is everything I've heard, said, seen, felt, etc, the cone of my reflective attention focuses on only those experiences that progress my current projects-at-hand. If those projects included the pursuance of ethnographic research into the cautioning of adult offenders by police, different happenings would be extracted for interpretation or the same happenings but now requiring retrospective examination and integration within different schema of

typification as holding different meanings for me than my professional projects-at-hand demanded. As such, an overheard and inappropriate conversation in a cell corridor can at one and the same time be meaningful as both a breach of protocol or procedure with a corresponding supervisory requirement to intervene *and* as a relevant piece of research data to be noted for later analysis, in both cases meaningful but meaningful in different ways. In this sense what I understand to be my research question and field of research enquiry will boundary my observational project-at-hand either broadening or narrowing my cone of reflective attention as a consequence. For example, if as researcher I had no interest in the micro-social world of face-to-face interaction believing that to be a subjective, unreliable and questionable domain of enquiry but instead sought 'hard' statistical evidence of adult cautioning outcomes as these were officially recorded, I would not be attentive to the interactional elements of the cautioning process as these flowed passed me in my stream-of-consciousness as they would not progress my projects-at-hand, whereas written data in the form of cautioning accounts held in custody and other records certainly would.

The research data selected out of my stream-of-consciousness by me are then lived experiences that hold meaning for me as evidence of police decision making with regards to adult cautioning and in turn this is a direct product of my ongoing conception of what my research project means, it could not be otherwise. Even if I had been presented with a preconceived research project by another person and asked to gather data for it, that data gathering would still be a product of my interpretation of the meaning of the various concepts involved, this is so even if the data sought was numerical in nature as the classificatory process of rendering lived experience into indices and statistics is an outcome of human endeavour requiring the interpretation of human acts through retrospective examination and typification whether that human endeavour was my own or another's.

If the directing of my attention back upon my lived experiences and the selection for interpretation and integration of these experiences into existing schema of

typification is directed by my projects-at-hand, I can then understand the motivational elements of such data selection and the boundaries of that motivation, prescribed as they are by my ongoing conception as to what my research project is and what it means to me. But the throwing into relief of a particular experience by my retrospective gaze is only part of a two stage process for, after attention has been so focussed, the experience is rendered meaningful only through successful location and integration within an existing or newly created schema of typification within my stock of available knowledge.

Here Sheptycki's conception of 'outside-insider' is useful (Sheptycki's 1994) As a serving police officer my 'insider' status points towards a professional and cultural stock-of-knowledge that enables me to function in the natural attitude of the in-group, I comprehend the taken-for-granted meaningful lived experiences of my consociates as I share those experiences and understand them as they do. As such I am at a research advantage as this aspect of my stock-of-knowledge, my insider stock so-to-speak, means I am already alive to the shared meanings of the in-group with regard the processes that I wish to study. This means that lived experiences of cautioning events are rendered meaningful for me within this frame of reference, I can, as Norris suggests view such activity through the 'occupational lens' (Norris, 1989, p.90). Additionally, as an outside-insider, I am a police officer undertaking academic research and also come to the field-of-action with an academic stock-of-knowledge built up through my years of study. This provides me with an 'academic lens' through which I can render such experiences meaningful in terms of their congruence or lack of congruence with dramaturgical, phenomenological and interactionist theory.

Recording data

The skill of recording accurate and effective ethnographic research notes that fully captured the meaning that an action or interaction held for the actor concerned was indeed a challenging one and something that took some practice to develop

competence at. Following one of my first complex verbal encounters between research subjects I noted that:

I have been finding it difficult to capture the more subtle situational components that would show analysis at the interactional level. Perhaps this is largely a result of my field-notes referencing the comments of a single person which occur outside of a sustained interaction. Here though there was an exchange and I have tried to include additional information within parenthesis to assist with interpretation of the dynamics of the conversation. This is a much more complex and challenging endeavour than I had anticipated, I do not feel particularly competent, I hope this will change as I get further into the observational phase of my research.

GEN0008

The additional information that I sought to include (to which I make passing mention in this note) really comprised of two distinct classes of research data, both equally vital. The first concerns data about non-verbal elements of interactions. These include bodily movements such as shrugs, body posture and body positioning, facial expressions such as smiles, smirks, raised eyebrows, a cock of the head, and a myriad other facial expressions with which officers often communicated unspoken information, threats and warnings. Also in this category is proximity, where a person moves close to another in order to invade what is often termed body space or a zone of comfort. Touch also is important, whether it be a light tap or a full blown rolling-on-the-floor struggle. The second of these classes of data concerns setting and aspects of setting that appear to impinge or become meaningful to one or more persons during an encounter or episode, whether that aspect of setting is a piece of paper, a mark on the floor behind which a suspect is

expected to stand or a cell door. An example of the significant nature of this first class of data is provided in the following field-note:

I noticed a very subtle interaction today and one that was only fleeting. An officer who had searched a prisoner he had arrested had placed the suspect's possessions on the table and was describing each item so that I could log the property. At one stage the suspect went to touch an item and the officer, a well built, tall and large man gently placed his hand over the suspect's keeping hold of the suspect's hand until he released the item. I noticed the officer maintained prolonged eye-contact with the suspect cocking his head slightly as he did so, which I took to be a form of non-verbal warning against future action of this type.

This interaction lasted only a second or two and involved no force but seemed heavy with meaning and control. Nothing was said verbally but a lot was said non-verbally about the officer's authority over the suspect who was a much smaller framed individual. On reflection, the officer's very size became a vehicle for meaning that was clearly not lost on the suspect.

GEN0060

If the accurate recording of non-verbal forms of communication and aspects of setting were proving demanding so too was the field note transcripts of verbal exchanges which I wanted to keep as accurate and verbatim as I could. The real world nature of my research and the often demanding and onerous requirements of my participation within the custody process itself required that I could only make notes of encounters, discourse, action and interaction when I had moments between jobs so-to-speak. The consequence of this was that at times, conversations were recalled and recorded mere minutes after they had happened whilst others were left

for an hour or even longer. This proved problematic in that the accurate and full recollection of exactly what was said and by whom and in what sequence, carries a degree of difficulty directly related to the length of time that has elapsed since it occurred and the complexity and duration of the interaction itself. I also wanted to capture the form, type and structure of the conversations I recorded so as to recreate the language adopted and the way it was used. Towards the end of my field research I noted that:

I have been taking time to carefully listen to people talk with each other today, not for the purposes of recording but as a means of comparison between the speech structures of spontaneous conversation and the notes of speech I have made over the last eighteen months. I have never been in a position in which I was able to contemporaneously record things said, I could not tape record, even surreptitiously, this would be a very risky venture indeed and one fraught with the dangers of exposure. Instead, I have undertaken to record interactions and aspects of the lived experiences of those who inhabit the cautioning stage very much after the fact, often soon after and within an hour or so, but in some cases the next day.

I have considered these notes to represent an accurate and adequate reproduction of both the circumstances of an interaction or other happening and, where possible notes concerning its setting and of other phenomena impacting on the social construction of meaning. In reviewing my notes and comparing them with continuous speech I recognise that the fluidity and structure of it can only be partially captured through reflection. Of most striking contrast is the large use of word spacers such as 'er', 'um', 'you know' and 'know what I mean' etc that pepper spontaneous speech but which are largely absent from my notes.

The flow of speech within an encounter is also often partially overlapping, with people over-talking each other or completing other's sentences for them. These subtleties are also absent from my notes. Thinking through these issues I am satisfied that whilst their absence may make my notes less a literal recording of speech-as-it-happens within the stream of consciousness of individuals privy to it, it does not impact upon the substance of what has been said and subsequently recorded. The at times faltering and fragmented nature of speech may underpin the meaning of what is said by providing some conduit to the speakers feelings, say his/her feelings of anxiety or inadequacy, but these states are often also apparent through non-verbal dimensions such as facial expression and body positioning and posture, and I have attempted to make these explicit where this has been possible.

Nonetheless, I have to acknowledge that facets of spontaneous speech such as word-spacers and overlap are absent from the field-notes and their absence may erode the full richness of the original lived-moment.

Another area which has become apparent is the colloquial aspects of language with its associated phrases, dropped consonants, slang expressions and jargon. I have tried hard to record these as accurately as possible and to give rise, through written words, to the sense in which the way a person spoke proved to be an articulation of their character. The capturing of colloquial patterning is a difficult project to complete with absolute accuracy and it is possible that my recreations of speech within its colloquial framework has become stereotypical and archetypal. Speech within the flow and fluidity of the natural attitude does not conform to the

structures or strictures of grammatical and lexical correctness, people use slang, they swear, they um and ah, slur, shout, mumble, and whisper. Officers utilise a wide array of jargon and jargon devices to maintain the mystical, symbolic and controlling nature of the custody setting and all around, people's speech overlaps others speech, gets stopped or interrupted, and sometimes is left hanging unfinished. It is the vehicle for meanings and I have endeavoured to note things said and the way they were said in an authentic and careful way. I hope that omissions of detail, such as those expressed above, will not harm the reality they serve to articulate.

This research is real world research completed under multiple and often competing pressures within a work environment in which I have real, direct and often consuming responsibilities. Its covert nature has dictated a method of recording that allows for a somewhat rough-and-ready note-taking, sometimes interrupted, sometimes rushed, sometimes ambitious but the best I could manage. A balance has had to be struck between the currency of the notes recorded and time available to make them. I have throughout, sacrificed extent for currency. This means that some entries are mere snapshots largely because I did not want to leave their recording to a time when I would have had greater capacity to make more detailed but less immediate notes of those happenings. One of the first things that a defence advocate will ask an arresting officer at court is when his or her arrest notes were made, the longer the gap between arrest and note-making the greater the criticism that facts and details have become lost from memory, this is also the basis upon which I have opted for immediacy and currency of recording in my own research endeavours.

The researched population

My role as a participant observer and my access to custody suites where my research could take place was prescribed. As one of a team of permanent custody officers working a fixed shift pattern, I had, over the period of almost two years during 1993-4, opportunities to conduct my research on approximately 400 days at two full time (i.e.: 24 hours a day 365 days a year) custody suites and additionally two temporary custody suites. The first of these temporary custody suites was a charging centre at a large football venue, the second an area within a Magistrates Court set-aside as a custody area during refurbishment of one of the permanent sites.

Accordingly my research population constituted those officers working in the custody suite either processing suspected individuals they had arrested or whose arrest they had witnessed, or dealing with cases as investigating officers, having taken a case over from the arresting officer, typically this latter population would be officers from the CID. In addition to arresting and investigating officers, other officers would assist in the custody suite from time-to-time as gaoler staff and with photographing and fingerprinting during busy periods. Occasionally, shift patterns meant that other custody officers would be working in the suite though typically on their own paper work, although assisting in a full custody role at busy times (some were more helpful and useful than others in these circumstances). Inevitably and despite supervisory efforts, the custody office would also attract its hangers-on, officers who were 'helping their mates out' by bagging property, searching prisoners and bringing cups-of-tea. Another routine police visitor to the custody area was the PACE Inspector who conducted detention reviews, offered advice and support on complex cases and custody problems, administered cautions and generally oversaw the functioning of the custody suite. In addition to those working on current arrests were another body of officers who required access to the custody

area to do follow up work on cases in which the arrested person had already been released, their needs ranged from enquiries about the custody itself for paperwork to the managing of property and exhibits.

The other significant research population was of course the arrested individuals themselves and in their wake, family and friends allowed visits, legal representatives called upon to provide legal counsel, 'police' doctors called for suspects when they were ill, injured, drunk or drugged and, in the case of juveniles, appropriate adults to safeguard their interest and take custody of them on their release.

I did not select these individuals from a random or framed sample nor did I stratify them in accordance with some pre-defined criteria such as class, gender, ethnicity or age. I took people, whether they were officers, suspects or legal counsel, as they appeared in my presence as possible subjects from whom possible data might possibly be forthcoming. When the time came to leave custody work and re-enter police training, I left my opportunity to research in a covert participant observational capacity behind and allowed this moment to mark-out the data gathering phase of my research.

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Chapter 5 – A textual analysis of the current cautioning guidelines

Imagine a language-game in which A asks and B reports the number of slabs or blocks in a pile, or the colours and shapes of the building stones that are stacked in such-and-such a place. Such a report might run: 'Five slabs'. Now what is the difference between the report or a statement 'Five slabs' and the order 'Five slabs!'? Well, it is the part which uttering these words plays in the language-game. (Wittgenstein, 1953 paragraph. 21)

Within any rule governed bureaucracy, the shaping and directing of social action towards specified outcomes through the imposition of official guidelines and rules, relies upon social actors translating the messages contained within such rules into action in such a way that the meaning intended by the rule maker remains intact, shaping and driving decision-making in officially desirable ways. This then is the objective of the official cautioning 'language game'. Where rules and guidelines are thought to have failed in achieving such desired outcomes, as is the case with cautioning, the typical bureaucratic response is to impose 'tighter' revised guidelines, to re-define requirements, describe the consequences of deviation from them, and to narrow consequential interpretation of the meaning of directives in order to secure increased control and delimiting of future decision-making by those tasked with this responsibility on behalf of the state.

The question is then, by what means does a set of written directives such as the cautioning guidelines, through changes in words, phrasing, content and grammatical structure, establish what Austin (1962) terms 'perlocutionary force'? (see also Coulthard, 1977, p.18-19) that is to say, text that succeeds in directing decision-making in ways that rule-in certain desired outcomes whilst ruling out undesired ones, thereby 'tightening-up' a hitherto problematic and inconsistent practice? A further difficulty faced by the author of such a directive, and one particularly germane to the administration of formal cautioning, is how best to

ensure that the 'end-user' does not interpret the meaning of any new and refined message in an equally perverse, cynical, instrumental or overly liberal way as was the case with the previous version? In other words, how does the author ensure increased performative adequacy? (Austin, 1962). As the official cautioning guidelines are the central written instrument through which the state seeks to shape and constrain police case disposal decision-making, it is essential then, that the textual and rhetorical devices utilised in this endeavour be examined with a view to exposing their location within and impact upon the occupational culture of the police work-world.

The project set-out within the official cautioning text is to create a directive framework within which decisions to administer formal adult cautions to 'deserving cases' can be made with reference to a set of quasi-legal benchmarks. At the same time, the project must also try to accomplish a level of authority which is sufficient to shape decision-making from a distance, the addresser cannot and does not hope to be present on every occasion and at every location when a caution is considered and administered but must instead influence action through written words and the meanings contained within them.

In phenomenological terms, the project of the discourse is to impose upon the addressee a recipe for action through the imposition of a set of meaning typifications that will in turn drive sense-making and decision-making action towards desired outcomes, the hope being that the meanings contained within the guidelines will become internalised into the addressee's stock-of-knowledge (Schutz, 1970) such that a new set of typifications will result which are fully consistent, indeed shaped by, the contents of the directive. In this way, on each occasion that the addressee comes to think about case disposal, the directions contained within the discourse inform the consequent decision-making process.

The preparation necessary to the completion of the project (at the discourse level) is thus a laying-out of a series of inter-dependent arguments concerning what

cautioning is, who it is applicable to, its seriousness and legitimacy as a case-disposal activity, caveats controlling its use and declarations about who may be called upon to administer it. The required preparation (at the level of social action) for the achievement of the resultant performance, is a step-by-step working through by the addressee of these provisions in a programmatic sequence or 'systematic exposition' (see Krippendorff, 1980, p.42-43) such that if A applies go to B and if B applies move on to C and so forth. For example, if there is sufficiency of evidence in a case then the addressee should next consider admission of guilt by the accused, if admission is forthcoming, then he/she should consider the offenders attitudes, and so on. The desired performance then become the consideration by the addressee of the applicability of a caution to certain cases and the administration of cautions to cautionable cases as these have been defined by the actor in light of his/her interpretation of the cautioning directions.

Narrative voice

It is not at all surprising to discover that the cautioning text makes extensive use of impersonal third person narration calling upon pro-nouns such as 'the officer' and 'The Police' in order to underscore and re-enforce its message of authority as a directive. The addresser *is* monolithic authority, the collective actor who is both transcendent and faceless and this gives the impression to the addressee that this set of proclamations carries the weight of such unstated and yet intimated authority and, as such, are not to be questioned.

The performative function of phrases such as 'the purposes of a formal caution are' and 'A caution is not a form of sentence' (contained at the very outset of the document) as well as others such as 'In practice consent to the caution should not be sought.....' is one of attempting to elicit compliance with contained directions and in this way to shape and constrain resultant official action.

The consequent relationship is necessarily one of distance and detachment and this too serves a performative function in that it seeks to convey objectivity and equity. By this I mean, the narrative voice is at the same time both authoritative and a source of consistent practice, laying down direction by which all who may be suitable for a caution become considered against the same set of criteria. This distance and detachment may, however, undermine the very aim of the document in that it is separate from the reality within which the offending act becomes interpreted by those tasked to consider case disposal options.

For me this is a crucial point. If the addressee gains the impression that the official guidelines, by virtue of their enunciation, have little real fit with his or her ongoing lived reality, there may, as a result, be less inclination on the part of the addressee to allow such directives to guide and direct action as a precursor to decision-making, but instead to indulge in what I would term 'post-hoc interpretation' i.e.: reading the meaning of directions only in light of and in accordance with the case-disposal decision already reached through justificatory accounting procedures such as the construction of arrest reports and case files.

Modality

Utterances within the document show categorical modality. This is evidenced by the absolute commitment by the addresser to the facticity of what is being stated, exemplified by such phrases as;

In practice consent to the caution should not be sought until it has been decided that cautioning is the correct course (Note 2D)

and;

In the case of a juvenile this explanation must be given to the offender in the presence of his parents or guardian (Note 2D)

However, there is also evidence in other areas of the text of a higher modality especially with the use of the word 'should' as in the phrase 'There should be a presumption in favour of not prosecuting certain categories of offender' (Note 3A). We see here a distinct shift in modality throughout the directive with phrases such as 'will not', 'cannot', 'it is necessary' (all examples of low modality) becoming interspersed with phrases such as 'there should be', 'may support' and 'it is desirable' (all examples of higher modality). It is worth noting nonetheless, that even where there is evidence of higher modality, these phrases and words still express a necessity and thus re-enforce the power of the addresser over the addressee.

Whilst this shifting modality could suggest a conflicting level of commitment on the part of the addresser to the facticity of utterances, it is more likely that this is an attempt to create a document of guidance (hence the areas of high modality) which must be followed and applied in all cases, in an effort to create a consistent and universal standard of decision-making for police case disposal recommendations (hence the higher level of categorical modality).

In fact, far from being a text with ambiguous performative function, this document offers-up a coherent and consistent quasi-legal discourse in which the power relationship set out in the opening 'aims' section is carried through without interruption. This is re-enforced by the title of the document which boldly states these to be 'National Standards'.

Lexical fields and textual cohesion

Within this semiotic investigation I have chosen five lexical fields for analysis each of which plays an important role in the overall pattern of meanings contained within the text and, when taken together, may be seen as significant elements of the overall textual cohesion of the discourse.

Need for evidence

Section 2 para 2 'there must be evidence of the offender's guilt'

Note 2A 'where the evidence does not meet the required standard a caution cannot be administered'

Note 6B 'care should be taken not to record anything about an individual which implies that he is guilty of an offence when the evidence is any doubt'

This is an important field for the overall coherence of the arguments put forward in the document, as it sets out requirements placed upon the addressee concerning levels of sufficiency of evidence required before a caution. What is unsaid is the relationship with statements concerning evidence sufficient to caution and that needed for the initial arrest and detention of the accused. This is of only passing interest here, but what the document implies is that the level of evidence needed for arrest and initial detention are not necessarily the same as that required to caution (which is necessarily a higher level).

Statements concerning evidence are inexorably interlinked with the lexical field of 'admission of guilt' cited below, as the unfolding story, which to some extent is a bit like a recipe, is one that seeks to set-out cautioning ground-rules as a series of inter-dependent processes. This is supported in the way that the text is formatted, with paragraphs structured in a step-by-step manner (numbered in sequence), which forces the addressee to follow the patterns of meaning as they are structured. The addressee is expected firstly to consider stated aims before working through conditions that draw together levels of evidence with admission of guilt. As these come first they may rightly be assumed to have greater immediacy in the cautioning process than sections which follow thereafter and if this line of argument is accepted this also suggests that consideration of the views of the victim, as this section appears last, should be considered last.

Admission of guilt by accused

Para 4 'the offender must admit the offence'

Note 2B 'A caution will not be appropriate where a person does not make a clear and reliable admission of the offence'

Note 3B 'a practical demonstration of regret'

Note 2C 'if an offence is committed by a juvenile under the age of 14, it is necessary to establish that he knew that what he did was seriously wrong'

The emphasis and re-emphasis apparent in this lexical field underpins the centrality of this issue within the cautioning process. Along with sufficiency of evidence this is a dominant field characterised by categorical modality.

When taken together, these two lexical fields (sufficiency of evidence and admission of guilt by the accused) offer the text its main textual cohesion and its greatest emphasis. It is interesting to note the quasi-legal nature of this discourse and the relationship between textual coherence, narrative voice and an ideology of legitimisation of an official and formal activity within the criminal justice system which is characterised by a distinct lack of legislative authority. It is as if the addresser is attempting to overcome the fact that cautioning exists at the level of a bureaucratic arrangement and not a law, by formulating a set of directives which convince the addressee of its law-like status. This is an important sleight-of-hand, as actors will need to be convinced to be convincing, that is to say, the police officers and crown prosecution agents tasked with administering cautions need to operate the cautioning system with the same belief in its legitimacy as they hold for legislation which has had the backing of parliament. I would argue that, by virtue of the fact that the addresser is a major arm of government, that the document purports in its title to be a set of national standards and because of the

semiotic elements so far examined and their impact upon the addressee, few such actors will even have considered that cautioning is actually not a set of legislated arrangements..

The victim

Section 4 'Before a caution can be administered it is desirable that the victim should normally be contacted to establish his or her view about the offence'

Section 4 para 3 'the nature and extent of any harm or loss and their significance to the victim's circumstances'

Note 4A 'if a caution is being, or likely to be considered its significance should be explained to the victim.'

Note 4B 'prosecution may be required to protect the victim'

Note 4C 'If the offender has made some form of reparation or paid compensation and the victim is satisfied, it may no longer be necessary to prosecute.'

There is a subtle conflict between the messages contained within this field which, for me, amplifies a level of ambiguity concerning the place that consideration for the victim holds in the cautioning process as a whole. On the one hand the text tells the addressee to consider the applicability of a caution by placing the offending act within the context of its consequences for the victim, when due consideration is given to the victims circumstances. So for example, the theft of £50 from a person who is rich is more likely to represent circumstances where the crime can be supposed to have less impact upon the victim given his/her circumstances than the same theft would have on an unemployed person receiving housing and unemployment benefit. As such a caution would more naturally follow from the former and a prosecution from the latter. On the other hand, the

addressee is told in an earlier part of the document that due consideration should be given to such factors as the attitude of the offender (Note 3B) and what group he/she has supposed ownership of (Note 3A). No guidance is offered to the addressee on how to resolve cases in which any of these factors comes into conflict.

Caution not a sentence

Section 1 para 2 'divert them from unnecessary appearance in criminal courts'

Note 1A 'A caution is not a form of sentence'

Note 1A 'it may not be made conditional upon the satisfactory completion of some specific task such as reparation or the payment of compensation'

Note 6A 'in presenting antecedents, care should be taken to distinguish between cautions and convictions.'

Caution as a form of sentence/conviction

Section 2 para 1 'A caution is a serious matter, it is recorded by the police'

Section 2 para 1 'it may be cited in any subsequent court proceedings'

Note 2D 'a record will be kept of the caution'

Section 6 para 1 'All formal cautions should be recorded and records kept as directed by the Secretary of State'

The biggest area of opposition between lexical fields is that between 'caution not a sentence' and 'cautioning as a form of sentence/conviction'. I have chosen these

field titles as they seem to best describe the conflicting messages contained within the text about these issues. In the first of these fields, the directive stresses how cautioning is aimed at diverting the offender from penetration into the criminal justice system proper, it actually uses the words that 'cautioning is not a sentence' and may not be made to be conditional upon such factors as reparation or compensation to the victim. Here, there is a strong message that cautioning is a less serious outcome for the offender than a court appearance and that it offers the chance (the only chance) for the offender to turn away from crime. But the directive goes on to state at several junctures that this is a citeable conviction with serious consequences, about which detailed police records will be maintained and produced in court should the offender later be tried on another matter.

The performative function of these two threads of meaning is to create an impression in the addressee that cautioning is on the one hand a serious case disposal option requiring careful and controlled decision-making that is to be shaped by these guidelines, but at the same time cautioning must hold a slightly different meaning for the suspect, characterised by images of 'second chance' and 'attractive option'. This is necessarily the case if the police officer is to make the cautioning package one that the offender thinks worth accepting, in a sense it must be sold to the offender, and to allow this to happen, the officer must be persuaded through the patterns of meaning contained in the text, to adopt this dual message about cautioning; the professional (this is what cautioning means for me as a police officer) message and the salesman (this is what I need to make the caution mean for the suspect) message.

The first of these messages, the professional message, serves to underscore that this is meant to be a fully functional case disposal option with which the professional police officer needs to arm him/herself. It is set up as a serious weapon in the fight against crime and one with teeth. This gives it its perlocutionary force sufficient to make the addressee want to make use of it and embrace it as a legitimate and desirable case-disposal activity. But this is not

enough, it is insufficient that the police officer embrace it in this way, he/she must also sell it to the accused to ensure its adoption by the 'customer' and to do this the officer must be made to hold another view of cautioning which is less severe and more attractive, sufficient for him/her to not only explain to the accused 'the significance of a caution' but equally as importantly to obtain his/her 'informed consent'.

Cohesive markers

The text is mainly characterised by conditional cohesive markers such as 'in-order to' and 'before' conjunctions which are expressive of an inter-dependent structure of meaning which derives its coherence and thus sense from conditions placed upon preceding text by subsequent clauses and caveats. Two examples of this are:

Section 2 para 1 'In order to safeguard the offenders' interests, the following conditions (note explicit use of the word 'conditions' here) must be met before a caution can be administered ... '

and

Section 4 para 1 'Before a caution can be administered it is desirable that the victim should normally be contacted to establish ... '

This is supplemented by certain causal cohesive markers particularly apparent within the opening section simply entitled 'Aims' which utilise the word 'purpose' to join together the meaning that cautioning should hold with the bulleted explanations that the addressee is told necessarily follow, these explanations are the reason for cautioning.

There is also evidence of anaphor with use of words such as 'it' to refer back to the central theme of 'the caution', itself centralised within the text by its repetition. Examples of anaphor include:

Section 2 para 1 '....it is recorded by the police and it should influence them in their decision whether or not to institute proceedings if the person should offend again'

The word 'caution' (or its derivative) is used on no less than 35 occasions within a document which only contains about 680 words this represents some 5% of the entire text!

Conclusion

The document 'National Standards for Cautioning (Revised)' prepared and issued by the Home Office and circulated to all police forces in England and Wales in March 1994 has serious implications for the way in which police view the entire issue of case disposal (over and above cautioning alone) and also sends out important messages to law enforcers about current government thinking concerning law breaking, offenders and victims as well as the role that the police themselves are to play in the criminal justice system.

A textual analysis of the cautioning guidelines suggests that the document, far from being a simple explanation of the facts of cautioning, is in fact a carefully designed and constructed set of meanings parcelled together in a coherent textual framework. It gives voice to an underlying ideology that is a mixture of expediency, authority and moral positioning and provides a subtle yet powerful means of manipulating police decision-making at many levels.

The process of textual deconstruction undertaken within this chapter, as with any form of microanalysis of this sort, is of course unable to capture the ways in

which such a written directive becomes transformed into actual social action at the point of interpretation and translation during the course of real arrest cases. That is not to say that it is not a valuable research methodology that serves to expose the performative functions such quasi-legal devices are meant to serve, of particular importance is the identification and examination of those rhetorical instruments and textual devices by which police case disposal decision making is to be shaped and delineated. Through analysis of research data arising from real-world instances of cautioning by police I will attempt to examine whether and how this official project of guidance and constraint become realised. It is to this task that I now turn.

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Chapter 6 – An ethnographic investigation into cautioning practices

but in the end one gets quite used to it. By the time you've come back once or twice you'll hardly notice how oppressive it is here.

Excerpt from 'The Trial' by Frank Kafka (1955)

Control as strategic action

The custody suite is a veritable cathedral of control. Given the requirements for safe-guarding the security of persons under arrest, this is perhaps hardly surprising, but the management and supervision of prisoners' freedom of movement and the prevention of their escape from custody represent only one relatively small aspect of what is a multi-dimensional control milieu (Asma, 1996, p.3). The round of daily exigencies within the custody area involves interactions, both verbal and non-verbal, that seek to control the definition of every facet of the in-custody situation. From the moment the suspect is arrested until the moment of their release, the meaning of what they have done and its likely consequences, the meaning of their various interactions with officers, the type of person others might perceive them to be, their movements, utterances, possessions, clothing, access to food, drink and toilet facilities and even their own sense of self will be subject to control of some form or another.

But control of the suspect is itself still only one of several dimensions of control sought and often secured by officers working in the 'home territory' (Lyman and Scott, 1967) that is the police custody area. Another is control over the interpretation of rules, policy, guidelines and law, for the application of such directives and statutory provisions requires that the often square peg of the alleged offence be somehow hammered neatly into the round hole of legal or procedural definition. It should be remembered however, that any law, guideline or provision prescribes police action only insofar as it is selected for application by the police themselves with regard to a particular case. Whist police hold the power to choose

how a case will be dealt with, they retain the power to select which case disposal methodology to invoke and indeed whether to invoke one at all. (Sanders and Young, 1994) With regard to the application or withholding of formal adult cautioning this power is absolute and not subject to any meaningful external review, judicial or administrative. (McConville, et al, 1991).

The use of control as strategic action in the pursuit of an officer's projects-at-hand can further be examined in terms of its symbolic or instrumental character (Holdaway, 1970, p.91). That is to say, the management of the ongoing definition-of-the-situation may be as an end in itself, where for example; the officer seeks to circumscribe how a person will behave or to manage how such behaviour will be understood by himself or others. Conversely, it may be instrumental in nature, a means to other ends, for example to control the definition of the offence with a view to securing the administration of a formal adult caution in order to resolve a case in which the evidence was weak or contentious.

The complex and often subtle interactional exchanges that I observed during my research between officer and suspect and (more markedly) between officers themselves, concerning suspects and concerning prosecution choices, can be plotted as trig points on the analytical map I have sketched out above. Accordingly, each case can be usefully examined within one (or more) of four primary frameworks of control namely; control of the suspect; control of the case; control of the caution and control of the setting. However, coercion by police of suspects, cases, setting and case outcomes of itself obscures the part played by the suspect within such interactions and especially with regard to access by the suspect to opportunities for and outcomes of definitional negotiation, this then will form an additional analytical dimension. By way of concluding examination of the data, the inter-relationship between coercion and negotiation will be considered through the utilisation of an analytical quadrant incorporating the four zones of high coercion/high negotiation, high coercion/low negotiation, low coercion/high negotiation and low coercion/low negotiation.

Control of setting

Regardless of which direction you approach the custody office from, whether that is via the police station yard, where police vans unload their suspected cargo, or from within the managed and closed environment of the police station itself, you will be confronted by locked doors, barred windows, caged holding areas, re-enforced glass and no-entry signs. Once inside, the trappings and signs of custody, confinement, and security continue, there are locked and shuttered cells and detention rooms, cell corridor dividing doors and barred gates, buzzers, lights, benches, safes, keys, handcuffs, seals, lines on the floor, cameras on the wall, interview rooms and uniformed police officers. It is a mini-prison whose floor plan, design, construction and architecture map out space for the processing and detention of persons under arrest. It is to this alien environment that suspects are delivered and it is this cornucopia of control and coercion that provides the contextual backdrop against which the construction and maintenance of any definition-of-the situation must be understood. This is 'a field for fateful dramatic action' (Goffman, 1972, p.25) as much for the officer as it is for the suspect and will imbue the lifeworlds of both with meanings, ways of thinking, acting and problem solving, but in each case these matrices of meanings will be fundamentally different for each actor.

From a dramaturgical perspective 'setting' is a significant component of performative action, assisting in the establishment and sustenance of the credibility and authenticity of claims about the situation and the self, as well as projections about who others are and how they should behave. Setting both creates a boundary around and accommodates dramaturgical activity and expectation by providing both stage and props which serve to frame the performance. For example, the layout, furnishings, uniforms, and décor of a coffee house frame both action and expectation of performance for the customer as a place of social gathering, leisure, informality and served refreshment. At the

same time this same setting provides the stage and sign equipment for a particular form of service action in which staff act-out and comprehend the extent and requirements of being a waiter or waitress and employee.

Whilst updating a log entry on a custody record and somewhat deep in thought, I became aware that an officer had arrived in the custody suite with an arrested person and that he was waiting for me to finish. Whilst I was writing I overheard the young woman whom he had arrested and who was starting to cry say..

SUS 'where am I?'

PC 'You're in the nick now luv, this is where we bring bad people so as we can bang-em-up for a bit, come over here (both move off to a cell corridor)..this is one of the cells.'

SUS 'I'm not gonna have to go in there am I? ' (Starts to cry)

At this point I was called away. Later when I confronted the officer and suggested that what I had overheard sounded like an attempt to terrify the suspect, the officer apologised saying that hadn't been his intention.

MWCT0028

The person entering the custody office under arrest for the first time does so very much as a stranger often unprepared for the heavily symbolic nature of the setting with its trappings of security exemplified by heavy metal doors and cages, cells, locks, bolts, seals, wickets (a small lockable hatch within a cell door) bars and grilles. Whilst the overt meaning of these devices may be simple and apparent, they create a context for thinking about the self which begins a process of what

Goffman terms mortification (Goffman, 1987, p.24). This process of abasement and degradation of self is one that I shall examine in detail under the control of suspect framework below, but it is important at this juncture to place this process within the context of setting, for the expressive nature of the devices I have described hold symbolic significance for the suspected person who is grappling with sense-making questions such as ‘what is it that is going on here?’ and ‘what is the meaning of what is going on here?’ (Goffman, 1986, pp.2-20) On entering the custody area the suspect physically and mentally crosses the line between liberty and imprisonment and must in the process shed aspects of the free-self with full and easy access to their home-world along the way.

That home world is the ... ‘world of daily life, given to us in a taken-for-granted way...The province of meaning of this world retains its accent of reality as long as our practical experiences conform to its unity and harmony. It appears to us a ‘natural’ reality and we are not prepared to give up the attitude that is based upon it unless a special shock experience breaks through everyday reality and induces us to transfer to another province of meaning.’ (Schutz, 1974, p.51) Arrest and the associated experience of custody represents for the individual just such a ‘special shock’ and one that requires them to grapple with the province of meaning that they encounter within the alien environment of the approached world of the police station

In case MWCT0028 above, the strangeness of the approached world of the police station is given further emphasis within the interactional exchange when the officer points out aspects of the setting and makes use of the colloquial phrase; ‘bang-em-up’, potentially confusing the person and further contrasting this place with the familiarity and safety of their home world. This new place must initially be understood in terms of pre-existent knowledge which proved sufficient in the home-world to allow for thinking-as-usual but:

The approaching stranger ... becomes aware of the fact that an important element of his 'thinking as usual', namely his ideas of the foreign group, its cultural patterns, and its way of life, do not stand the test of vivid experience. The discovery that things in his new surroundings look quite different from what he expected them to be at home is frequently the first shock to the stranger's confidence in the validity of his habitual 'thinking-as-usual'. Not only the picture which the stranger has brought along of the cultural pattern of the approached group but the whole hitherto unquestioned scheme of interpretation current within the home group becomes invalidated. It cannot be used as a scheme of orientation within the new social surrounding. For the members of the approached group *their* cultural patterns fulfil the functions of such a scheme. (Schutz, 1964, pp.91-105)

Thus the meaning of the unfamiliar custody setting is not fully and adequately captured by the approaching stranger through access to his/her knowledge-at-hand and it is thus vulnerable to the controlled interpretation of the officer who, through such definition control is able to imbue the setting with instrumentally fixed symbolic meaning. In case MWCT0028 the suspect is clearly scared, unsure, hesitant and emotional and these messages are both understood and manipulated by the officer through an explanation that amplifies the frightening potential of the cell and its symbolic significance whilst at the same time beginning the process of defining the suspect's self in terms of 'bad people'. A further example of this control of the meaning of setting is provided by an extract from GEN00038:

I have noticed that in keeping this log I have a growing awareness of both the verbal and non-verbal actions of both officers and suspects who enter the custody suite. It is perhaps unsurprising that the police station has a big impact on many of the people

brought here. Most are subdued and some look terrified. Occasionally a suspect will break down and cry (usually when they are on their own in the cell). Most officers are, or seem to be, indifferent to this trauma and some manipulate it saying such things as 'you'll be out much sooner if you tell us what actually went on' or 'muck us about and you'll be here overnight' or 'Shall I put this one in our Napoleon Suite Sarge?' at other times the 'serves you right mate' attitude arises 'Shouldn't have fucking nicked it then son should you!' or 'You should have thought about that before you did it mate'.

GEN0038

Such verbal pre-judgements are very much part of the cut-and-thrust of the occupational culture and its language of control, becoming so routinized and habitualised they are rarely noticed and even more rarely sanctioned by supervisors. Inverting the intention of something Goffman said illustrates the cynical base for such (often) unconscious verbal activity; 'Social settings establish the categories of persons likely to be encountered there. The routines of social intercourse in established settings allow us to deal with anticipated others without special attention.' (Goffman, 1990, p.12) Whether routinized or unconscious, these verbal 'put-downs' represent significant messages for the suspect concerned and emphasise that, for the officer, the presumption of the suspect's guilt is absolute, they are significant mechanisms of continuing interactional control.

Cases MWCT0028 and GEN0038 confirm and almost mirror examples of such strategies of control offered by Holdaway over 10 years earlier:

An officer took a juvenile to the door of a cell passage and explained'That's where we put naughty boys like you

(indicating the detention rooms) but we put men, naughty men, over there in those cells. Do you want to go in one of those cells?' He then took the boy to the door of a cell, returned to the charge room and a confession was soon obtained. (Holdaway, 1983, p.33)

Of further significance is the clear distinction drawn by the officer in Holdaway's quoted example between detention rooms and cells. For the officer this distinction is procedurally significant and has meaning in terms of the accepted and acceptable means of dealing with the custody of juvenile suspects who should, as far as is practicable, be placed in detention rooms and not in cells. The actual distinction is far less clearly delineated, whilst detention rooms have wooden doors and cells have metal doors, in all other aspects both are identical. In the quoted example the differences are *symbolic* and rest on the increased severity implicit in the idea of being locked-up in an adult cell, a metaphorical escalation from juvenile to adult offender status. In lieu of personal knowledge and experience that would show this differentiation to be exaggerated and the basis of the threat flawed, the suspect is left with no other option but to see the situation as the officer defines it.

Setting and interactional leverage

In the custody area officers expect and will often demand that suspects adhere to expected patterns of behaviour that include deference to their implicit or stated authority, adherence to stated instructions, demands for respect and compliance. When these are not forthcoming, officers (including custody officers) may refer to or make use of elements of setting to restore the interactional order as they deem this to be. The most typical examples of this are reminders of the fact that the suspect is now in the police station and will not do themselves any favours by 'acting-up' or, where threats are made to move a suspect from the reception area to a cell, what Holdaway terms control through 'the use of isolated space' (Holdaway, *Ibid.* p.33).

A suspect had been brought in front of me for booking in and had initially refused to provide his name and address.

PC ‘You’re in the nick now, don’t try and be clever, just be a good boy and answer the sergeant’s questions.’

MWCGEN0085

The back door opens and a PC appears leading a suspect by the upper arm, the man is struggling to release himself from the officer's grip. The officer turns to the suspect and says:

‘You're in the nick now son, you behave yourself in here, d'you ‘ear me..you're onto a loser behaving like that in here.’

MWCPO0022

Two officers had brought two male suspects into the station having arrested them on suspicion of trying to take a car without consent. One of the suspects was sitting on the bench in the custody area with his arresting officer whilst I was booking in the other. As the arresting officer who was with me began explaining the facts of the case, the suspect who was sat on the bench suddenly said:

SUS1 ‘You never saw us in the car you liar!’

PC1 ‘As I was saying sarge, as we approached the vehicle both suspects alighted from it and decamped, running’

SUS1 'That's a lie you never saw us in the car, we was never in that car, you're a fucking liar!'

PC1 (turning to the suspect on the bench) Shut up or you'll be put straight in cell until you can behave.'

SUS1 'I can say what I want, put me in a cell if you want to, but we wasn't inside that car. (Calls out other suspect's name) say nothin' to these wankers and ask for a brief.'

MBCT00073

This last case, apart from highlighting the use or threat of isolated space as a means of control, also exposes the interactional expectations existent within custody phases. In this case a suspect is seeking, albeit vociferously, to negotiate an alternative definition of the situation than that which allegedly prevailed at the time of his arrest, but he falls foul of a non-disclosed turn-taking rule whereby suspects are not expected to provide their version of events until the officer has given his evidence of arrest (if at all). Such phasing of behaviour is not made explicit to suspects, who, as I have suggested above, are expected to act with deference and to speak only when spoken to, they are dealt with on the assumption that they 'know the rules of the game' until they show otherwise. Such un-stated phasing and sequencing rules are highly analogous to those that exist within a trial where the un-informed defendant is expected to abide by unspoken turn-taking rules during his defence. No notice is taken by the officer at this time of the suspect's claims to innocence.

(the) civilian participant displays some of those very properties which are important *not* to display in focussed interaction – embarrassment, lack of poise, distraction, failure to take proper

turns at speaking and disregard of spacing rules. 'They fail to be properly demeaned' (Goffman, 1956, p.489). (Sykes and Clark, 1972, p.2)

Anxiety and frustration concerning the confusing nature of this strange setting, together with uncertainty regarding the expectations of those in authority and the phasing and sequencing of happenings are typical reactions by suspects on arrival and particularly by those for whom this is a new experience. A powerful illustration of this uncertainty and its associated vulnerability concerns what the suspect is allowed to do with their own body and associated personal body-space whilst in custody, where they are allowed to stand and when, where they are allowed to walk and when. The following two cases; MWCT0071 and FWCGEN0054 illustrate the powerful nature of both symbolic and explicit control of the body within and in relation to the custody setting:

I overheard the following conversation between a suspect and the officer who had witnessed the arrest and assisted in it. The suspect was seated on a long wooden bench within the open area of the custody suite and the officer was standing by her writing his arrest notes and occasionally glancing down at the suspect to check on his 'charge'

SUS 'can I ask you something?'

PC 'Not just now, I'm writing my notes.'

SUS 'Oh'

(some moments later)

SUS 'Do I have to sit here, can't I stand up and walk about a bit?'

PC 'You'll have to sit there until the sergeant is free to book you in, just be patient.'

SUS 'Stand up, sit there, speak, don't speak, I don't understand what I should be doing, should I be phoning a solicitor or something, am I allowed to do that?'

PC 'All in good time.'

SUS 'Oh'

MWCT00071

'See that line on the floor, I want you to stand just behind it and listen carefully to what the sergeant has to say to you.'

FWCGEN0054

Given the expressive idiom of a particular civil society, certain movements, postures and stances will convey lowly images of the individual and be avoided as demeaning. Any regulation, command or task that forces the individual to adopt these movements or postures may mortify the self. In total institutions, such physical indignities abound. (Goffman, 1987, p, 30)

Due deference and demeanour

In MBCT00073 above, there is an example of a transgression of another type, a failure of expectations concerning due deference and respect. By accusing the officer of being 'a liar' (and a 'fucking liar' at that), the suspect reveals himself to be 'mouthy' and 'trouble', a challenge to the officer's authority and his ability to manage both the suspect and the immediate custody environment as the custody officer's proxy, in accordance with the accepted codes of conduct within the custody area, as these are constructed and reproduced through the daily workings-out of the occupational culture by individual social actors within this setting.

The assumption made by Hilton's police was that, once in custody a person was not just under the legal control of the police but, more than this, control meant submission to all action officers felt appropriate. This meant deference, quietness and compliance with searching, questioning, movement within the charge room and composure. The assumption was that persons in the station were 'prisoners' – that was their designation, not 'suspect', 'detainee' or 'person arrested'. (Holdaway, 1980, pp.124-5)

When a rule of conduct is broken, two individuals run the risk of becoming discredited, one with an obligation, who should have governed himself by the rule; the other with an expectation, who should have been treated in a particular way because of his governance. (Goffman, 1971, p.398)

The potentially discredited, or at least challenged officer seeks through coercion to re-establish governance, he threatens the use of isolated space both as a means of re-establishing the working rules of the custody area through distancing the suspect from that setting, and by so doing, throwing his challenges into the audible background, but he also seeks to impose direct control upon the definition

of who he is; an officer not to be messed with, who the suspect is; a prisoner who will do as he is told (if necessary following physical coercion) and what the custody area signifies and symbolises; a place where behaviour that challenges cultural rules of conduct and interaction will not be countenanced.

In MBTC00073, MWCT0028, GEN38 and the example from Holdaway above, we can readily see how officers utilise and integrate the symbolic power of setting as an intrinsic part of their performative work in managing and sustaining an ongoing definition of the custody situation for suspects and others. Of primary importance in this performative endeavour is the projection of both authority and power. With regards to authority the officer seeks to project a legitimate claim to power through the issuing of commands, obedience to which ensures that the officer is able to manage the impression that the use of power, though not demonstrated would be both possible and justifiable. Power is the successful construction and maintenance by officers of the suspect's ongoing custodial reality as defined by him . In effect then, officers are engaged in providing a one-sided and (for them) strategically advantageous answer to the suspect's sense-making questions considered earlier, namely; 'what is it that is going on here?' and 'what is the meaning of what is going on here?' That is to say, they are actively and continuously engaged in an attempt to control meaning. Management of the significance that setting holds for the definition of the situation is a crucial component of this.

Although the strategic methods of interactional control described above are an intrinsic dimension of the occupation culture and are used and sometimes manipulated by officers to pursue their various purposes-at-hand, that is not to say that they are not also procedural and policy pre-requisites, for in many cases they are. The reception, booking-in, searching, security, interviewing and confinement of suspects within a secure environment prevents escape, allows investigation and interview, facilitates the gathering of evidence, protects victims and in some cases suspects themselves, prevents further disturbance or assault and allows the

prosecution to prepare its case. Even where the definition of the custody situation was not being actively managed or controlled by officers there were circumstances where such procedural requirements had the same effect as is apparent with the example at GEN0031:

A suspect has just complained to me that he finds it embarrassing having to have an officer present with him whilst he is using the toilet. He said that it was a breach of his privacy and that he intended raising this matter with his solicitor as he saw it as harassment and oppressive. The man had not at that stage been searched and as such this would be standard practice to ensure that he didn't attempt to dispose of items which might be evidence against him, I explained this to him but he was still unhappy. It is interesting how the suspect felt controlled by this policy.

GEN0031

This example throws up an important issue about setting and what Goffman calls 'violation of informational preserve' (Goffman, 1987, p.32). Here a hitherto private activity; going to the lavatory, is in these new circumstances now required to be undertaken in front or in the view of others, in this case an officer. The suspect bemoans his loss of privacy and alleges harassment. What he is not to know, perhaps, is that each cell and detention room within the custody facility also has a spy hole into the lavatory area, the angle and field of view of which prevents a view of the suspect below shoulder height, but nevertheless allows visual access to the suspect whilst he/she is using the cell toilet.

Prisoners and mental patients cannot prevent their visitors from seeing them in humiliating circumstances ... exposure follows from collective sleeping arrangements and door less toilets. (Goffman, *Ibid.* p.32)

Control of the suspect

The recruit comes into the establishment with a conception of himself made possible by certain stable social arrangements in his home world. Upon entrance he is immediately stripped of the support supplied by these arrangements. In the accurate language of some of the oldest of our total institutions, he begins a series of abasements, degradations, humiliations and profanations of self. His self is systematically, if often unintentionally, mortified. He begins some radical shifts in his *moral career*, a career composed of the progressive changes that occur in the beliefs that he has concerning himself and significant others. (Goffman, *Ibid.* p.24)

Despite the transitory nature of incarceration within a police station's custody suite the systemised and routinized nature of attacks on the self that take place there are highly analogous to those described by Goffman as existent within typical total institutions. Over and above the effects of temporal and spatial coercion discussed by Holdaway (1980) are the effects of those violations of personal identity, privacy, informational preserve and personal space that result from the various reception, evidence gathering and security provisions to which the individual becomes subject both on arrival and during their period of confinement. These violations of self may stem from ratified and approved procedures with logical purposes but that is not to say that their consequences for suspects are not telling and impacting. Moreover, such procedures and provisions may be typical components of each officer's taken-for-granted work-world, but that is not to say that their consequences for the suspect are unknown to or unnoticed by the officer, nor is it to say that this mortifying knowledge is not used for control and leverage in pursuing the officer's purposes-at-hand for these are significant coercive resources.

The searching of suspects is a part of the in-custody procedure that few suspects like and many find demeaning and embarrassing. On many occasions over the last few weeks I have seen officers use the search as a means of increasing control and power over the suspect, slowing the itemising and bagging of personal property to prolong the suspect's agony at having their personal effects scattered all over the desk in full view of all those gathered around. Jokes are also used to heightened embarrassment when items such as condoms are uncovered. At other times I have heard officers comment to suspects on the odour of items of their clothing seized for evidence, such as footwear and socks.

GEN0038

(Pushes arrested youth into a seat at the edge of the custody area and leans over him) 'Stop being a prat and mucking me about. When I tell you to empty your fucking pockets and put your stuff on the table for the sarge to list I fucking mean it! You need to be careful, I was going to be nice to you but keep on behaving like that and I'll make sure you go straight to court.'

MWCA0042

PC *'sarge, do you want me to take his watch, rings and other jewellery off him?'*

SUS *'I need me watch, can't I keep that at least.'*

PC *'you know what they say, if you want to know the time ask a policeman (laughs)'*

SUS 'Please can I keep me watch sarge, andI don't like taking me wedding ring off, it's been on me finger since I got married.'

This conversation took place whilst the suspect was being booked in and his property checked following search. It's routine practice to itemise what people have in their possession when they are brought to the station on arrest and to allow them to retain personal items unless they might use these to aid them in escaping or to inflict harm or injury to themselves or others.

The officer's seemingly sarcastic comment was actually quite gentle and said in a friendly not threatening way.

The suspect was allowed to retain all of his personal jewellery including his watch and ring.

GEN0070

Mortification of the self and the invasion of egocentric territory

The personal effects that each of us carries around says something about the type of person we believe ourselves to be and would wish others to accept. Moreover, items such as photos and jewellery can often hold symbolic significance as tokens of love, signs of affection, memories and reminders, serving to locate us within a family or community and connecting us with our home world, a world that is familiar and safe, known and knowable. They are in essence, components of self, facets of identity, marks of membership and belonging, a point exemplified in GEN0070 above. The handling and seizure of such personal effects by officers

during the initial searching of arrested persons, represents a crucial means by which arrested individuals are controlled within the custody suite. The searching, listing and bagging of suspect's property moves these private trappings of self into a more public domain and out of a suspect's immediate control and into the hands of the arresting officer, it represents a violation of what Goffman terms 'egocentric territoriality' (Goffman, 1971 pp 28-41). GEN0038, and MWCA0042 above provide examples of the ways in which officers maximise coercive opportunities in this regard and by doing so tend to mortify the suspect's sense of self through the amplification of their incarcerated and powerless status. The removal and retention of personal effects is then a further means by which the arrested person is distanced and cut off from their home world where claims to self and its associated territories proceeded unproblematically, being sustained through day-to-day interaction with consociates.

I was dealing with a suspect who had had his clothes taken from him for later forensic analysis at the police laboratory. As in other such cases where a suspect's clothing is removed a white paper suit and black plimsolls were provided together with extra blankets.

ME 'You'll need to phone his home address and arrange to have some other clothing and shoes delivered here or picked up, maybe the van can do it if they're not tucked up.'

PC 'Yeah but no rush eh sarge, it won't do him any harm to stay like that for a while.'

GEN0087

The removal of clothing represents a stripping-away of the last layers of a suspect's personal 'identity kit', an erosion of 'personal front' and a point of

complete transition to quasi-inmate status in the police station. The concomitant vulnerability of such a process cannot be overstated and the flimsy, disposable nature of the paper-based material of police issue clothing serves to amplify this exposure. No underclothing is provided in cases where those garments are removed and retained by police for forensic evidence gathering, leaving the paper suit as the sole layer of clothing for suspects in these circumstances, which they are expected to wear both inside and outside the cell (during interviews or in meetings with their solicitor, for example). In case GEN0087 above, the officer in the case is both aware of and seeks, through prolonging this phase, to make use of the mortifying potentiality of this situation as a means of extending and expanding his control over the suspect. Both the elements of vulnerability arising from the removal of personal clothing and the demeaning nature of the official replacements serve to erode the suspect's ability to present a credible and conforming self to others causing what Goffman terms 'personal defacement.':

One set of the individual's possessions has a special relation to self. The individual ordinarily expects to exert some control over the guise in which he appears before others. For this he needs cosmetic and clothing supplies, tools for applying, arranging, and repairing them, and an accessible, secure place to store these supplies and tools – in short, the individual will need an 'identity kit' for the management of his personal front.

On admission to a total institution, however, the individual is likely to be stripped of his usual appearance and of the equipment and services by which he maintains it, thus suffering a personal defacement. (Goffman, 1987, pp.28-9)

'Informational preserve' is for Goffman a further zone of egocentric territory within which claims to privacy concerning details of self are made. Access to details about a person are normally controlled by them even when in the presence

of intimate others but this preserve is often violated within the reception procedure when embarrassing and or personal details about a person and their past are revealed and openly discussed, for example where a person has a previous history of offending or has done some embarrassing act during arrest or within sight of the officer. The contours of privacy within a person's informational preserve extend to incorporate personal effects and the meanings they hold for the individual, the open displaying, detailing and itemising of which can violate informational preserve in much the same way as can revelations of self. The displaying and commenting upon of personal items such as condoms or birth control pills, personal diaries, photos of partners or the dirty appearance or odour of items of clothing and footwear are typical examples. Whilst it could be argued that the seizure of an arrested person's personal effects by police is driven and at the same time constrained by legal and procedural rules, restricting the retention of items to those which are suspected to be evidence in a case (not necessarily the case for which the person is under arrest) and other items which might cause injury to the arrested person or to others, or which might assist in escape, such rules are interpreted in the broadest of terms (see FWPCO0067 below). In the absence of any form of accountability (internal or external), the question of the efficacy of such retention decisions will rest with the police themselves who hold the power to construct and sustain the meaning that specific items of personal property should hold for them within the custody process. Irrespective of whether the retention regulations allow for it, where the withholding of personal effects enables officers to push forward with their purposes-at-hand, property will be seized and retained.

A suspect who had been brought to the custody suite on arrest following involvement in an affray was refusing to provide his name and address. He was being searched by a male officer unconnected with the case as the female officer who had arrested

him stood alongside. Personal possession were removed from his pockets and placed on the desk for itemising.

PC 'you'll have to take that watch off and any other jewellery like chains.'

SUS 'Why d'you need me watch?'

PC 'For a start we don't actually know it is your watch you might have nicked it.'

SUS 'I can prove its mine its fucking engraved init!'

PC 'Show us then'

The suspect removes the watch and turns it over showing the officer the engraving. The officer reads the name engraved on the watch out loud..

PC 'who's (states name on watch)

SUS 'who d'you think it is, it's me init!'

PC 'I thought you weren't going to tell the sergeant who you were (laughs and shakes his head), you're not the sharpest tool in the work-shed are you son'

FWCPO00066

Another territory of self often violated during in-custody procedures is personal space, that territory around our bodies which, if invaded, causes us to feel others

have become uncomfortably close and, as a result, often causes us to want to back away. Whilst in custody, individuals rarely enjoy uninterrupted personal space (except when in cells) with the closeness of the officer and unwanted touch often seen as a security pre-requisite by them. Arrested persons are held physically at certain times, their bodily movements directed, their freedom of movement constrained. This is the most overt and obvious manifestation of the control of suspects and officers will often maximise their physical control over suspects by manipulating their personal space in differing ways.

Given that individuals can be relied on to keep away from situations in which they might be contaminated by another or contaminate him, it follows that they can be controlled by him if he is willing to use himself calculatedly to constitute that object that the others will attempt to avoid, and in avoiding, move in a direction desired by him. (Goffman, *Op Cit.* p.53)

The arresting officer is a very tall and large man and I noticed that as he dealt with the suspect, whom he had arrested for smashing the glass in a bus shelter, he would move himself so that he was unusually close to the suspect. I also noticed that the suspect kept on backing away, seemingly uncomfortable with the closeness of this contact.

MWCCD0030

I noticed a very subtle interaction today and one that was only fleeting. An officer who had searched a prisoner he had arrested had placed the suspect's possessions on the table and was describing each item so that I could log the property. At one stage the suspect went to touch an item and the officer, a well built, tall and large man gently placed his hand over the suspect's keeping

hold of the suspect's hand until he released the item. I noticed the officer maintained prolonged eye-contact with the suspect cocking his head slightly as he did so, which I took to be a form of non-verbal warning against future action of this type.

This interaction lasted only a second or two and involved no force but seemed heavy with meaning and control. Nothing was said verbally but a lot was said non-verbally about the officer's authority over the suspect who was a much smaller framed individual. On reflection, the officer's very size became a vehicle for meaning that was clearly not lost on the suspect.

GEN0060

A suspect having been asked to empty his pockets as a prelude to a more comprehensive search, is interrupted by the arresting officer, who grabs his wrist to prevent the suspect from pulling contents out that might prove dangerous such as; a knife or syringe, or that might be evidence such as; drugs which he then attempts to conceal or throw away when not watched.

MWCGEN0047

We very generally find staff employing what are called admission procedures, such as taking a life history, photographing, weighing, fingerprinting, assigning numbers, searching, listing personal possessions for storageinstructing as to rules and assigning to quarters...Admission procedures might better be called 'trimming' or 'programming' because in thus being squared away the new arrival allows himself to be shaped and coded into an object that can be fed into the administrative machinery of the establishment

to be worked on smoothly by routine operations (Goffman, 1987, pp.25-6)

Arrested persons brought to the police station are subject to the 'trimming' and 'programming' pressures of such admissions procedure, characterised by both a 'leaving off' and a 'taking on' (Goffman, 1987, P26). As has been suggested above, they are subjected to the systematic stripping away ('leaving off') of egocentric, informational and body space preserves whilst being required to 'take-on' a new impersonal incarcerated identity, make use of impersonal effects such as washing and shaving accoutrements, eating utensils and perhaps new clothing whilst conforming to the rigours of spatial confinement and custodial existence.

They 'experience 'civil death' and the 'mortification of self': they lose their civilian clothing and rights, they have very limited privacy and they are forced to endure 'batch living'. Their personal territories are invaded and damaging personal information is publicly aired....(they) are 'disinfected of identifications' and lose their 'identity kits'. The mortification of self is a profound attack on an individual's identity. (Manning, 1992, p.107)

Embarrassment and its uses

The person's 'natural attitude' towards the 'taken-for-granted' fluidity and resonance of encounters that took place in the round of daily life within the home world is not possible or sustainable within an environment where so many personal preserves are being systematically violated during the rigorously controlled interactions that occur within the custody area. Accordingly, the individual experiences dissonance and discomfort as claims to self are discredited and interactional embarrassment ensues:

At admission, loss of identity equipment can prevent the individual from presenting his usual image of himself to others. (Goffman, 1987, p.30)

During the interaction the individual is expected to possess certain attributes, capacities, and information which, taken together, fit together into a self that is at once coherently unified and appropriate for the occasion. Through the expressive implications of his stream of conduct, through mere participation itself, the individual effectively projects this acceptable self into the interaction, although he may not be aware of it, and others may not be aware of having so interpreted his conduct. At the same time he must accept and honour the selves projected by the other participants. The elements of a social encounter, then, consist of effectively projected claims to an acceptable self and the confirmation of like claims on the part of the others. The contributions of all are oriented to these and built on the basis of them.

When an event throws doubt upon or discredits these claims, then the encounter finds itself lodged in assumptions which no longer hold ... At such times the individual whose self has been threatened (is caused) ... shame and embarrassment. (Goffman, 1967, p.106)

The interactional embarrassment that results from the discrediting of claims to a particular self made by the arrested person during interactions with officers, claims, for example, to be a law abiding citizen, a docile individual that would not assault another, as a sober individual, as a person who pays his road tax or as a man who would not sexually assault a woman, cannot be diffused or glossed over, turned aside, laughed off or shown to be erroneous, as they might in the home

world of everyday life, populated as it is with sympathetic consociates ready and willing to sign up to and support such diversionary and reconstructive interactional strategies. This is particularly the case because attempts to nullify the discrediting of such claims to self directly challenge the officer's very reasons for arrest and restraint. That is to say that the very basis of arrest is the assigning to a person of a projected law breaking self by the officer and the sustaining of that projected self through the in-custody procedure. There is a very real relationship between an officer's claims to a truthful, fair and valid professional self projected towards and sustained by fellow officers during encounters and the discrediting of the self of the suspected individual in the ways that have been described. An example of the conflictual consequences of negotiated self are well illustrated at MBCT00073 above and GEN0072 below.

During the searching of a suspect who had been brought to the station on suspicion of burglary he was asked to remove his footwear for evidential purposes (they would be subject to analysis for shoe prints). I noticed that the suspect quickly became uncomfortable standing without shoes:

SUS: 'When am I going to get me trainers back then?'

PC '6-8 weeks, we'll have to send them to the lab to see if we can get any marks off 'em.'

SUS 'You're 'aving a laugh!'

PC 'Er, no'

SUS 'What, I'm s'posed to walk about in my socks?'

PC 'Giving as how your feet reek, we'd better give you some plimmy's (laughs)

The suspect noticeably reddened in the face and looked embarrassed.

SUS (on seeing the supplied footwear) You are having a laugh, I can't wear these!

PC 'Suit yourself'

SUS 'What, and me wife visits me and I get to wear these (shakes his head)

PC '(laughing) They ain't so bad as all that!'

SUS 'Yeah, well, it's all right for you but you ain't got to wear them and look stupid, it's like being back at school!'

PC 'Don't make such a fuss, you're starting to sound like a school kid!'

The suspect fell silent and made no further protests

MWCT0092

I witnessed a very strange but interesting strategy this evening. A loud and argumentative man was being booked in by a colleague and I could tell that this sergeant was beginning to become irritated with his behaviour.

PS 'Calm down for heavens sake, if you keep ranting and raving like this we'll take forever just to get your details written down.'

SUS 'You've got no fucking right to keep me here it's a fucking disgrace, I'm the victim here! (shouts) I'm the fucking victim here!'

PS 'take his shoes and socks off'

Both the suspect and the arresting officer do a double take and look questioningly at the custody officer.

PS 'take his shoes and socks off and bag 'em up'

PC 'umm take off your shoes and socks please'

SUS 'Why the fuck do you want my shoes and socks?'

PS 'Because in my experience it's very hard to stand on a cold floor in your bare feet shouting and swearing.'

SUS 'Alright, alright, I'll calm down but I ain't taking my fuckin' shoes and socks off and standing here looking like a cunt am I? I'll tell my fucking solicitor about this (mutters under his breath 'fuckin disgrace)'

GEN00072

MWCT0092 and GEN0072 also provides illustration of the control of suspects possible from strategies which violate their personal preserves and which demean

their personal front (that image of self that the arrested individual would normally expect to be able to present to others). The removal of footwear and socks, whilst causing physical discomfort also produces interactional discomfiture and embarrassment, undermining the person's ability to sustain claims to self as a normal, intelligent, thoughtful, balanced and above all law abiding individual. This is clearly a position from which the person will want to recover and to do so will, as in this case, acquiesce immediately to demands for due deference and respect.

It should be noted that what, for the suspect, represent protestations of innocence and an attempt to negotiate an alternative definition for both his arrest and his status as a suspect is, by turns, re-cast as 'ranting and raving' and 'shouting and swearing' by the custody officer. In essence, when the officer demands that the suspect should stop this means of communication he is demanding that he stops protesting his innocence. In this sense the behaviour of the suspect is not treated by police as an attempt by the suspect to create distance between his self as he claims it to be and that prescribed to him by both officers and process, but instead, is taken as being directly indexical of his true self, as evidence that he should be treated as that type of loud and difficult individual.

Presentation of self

The interactional embarrassment evident in such cases is often inescapable and potentially cyclical: 'In ordinary life, an individual is generally able to separate self from disrespectful treatments of it by others (Goffman, 1987, p41). Through certain face-saving reactive expressions, the individual is able to establish a distance between the mortifying situation and the self. Such expressions of irony or contempt – on the part of the inmate, however, are taken to be actions revealing the self rather than actions revealing the self's separateness from the degrading circumstances. Goffman calls this a 'looping effect' an agency that creates a defensive response on the part of the inmate takes this very response as the target

of its next attack. The individual finds that his protective response to an assault upon self is collapsed into the situation (see Branaman, 1997, p, 1 VI)

The diametrically opposed nature of claims and counter claims to self within officer/suspect encounters is a crucial dynamic when analysing such interactional activity and of particular importance when attempting to understand the reification of power relationships and control within them. The suspect is, as has been shown, at a severe negotiational disadvantage as, by the very act of laying claim to a self which questions officer testimony as to their alleged misconduct, they at the same time discredit the moral claims of officers. All too often such negotiation of self by suspects is seen by officers as antagonistic, problematic or disrespectful behaviour that needs to be controlled. Thus the motivation of officers for the adoption of the control strategies and the amplification and manipulation of mortifying moments described above, can in part be understood as an attempt not only to control the ongoing definition of the situation in all its complexity but also to project and sustain righteous and moral projections of self and to resist any attempts by suspects to discredit those projections through counter claims.

Staff often feel that a recruit's readiness to be appropriately deferential in his initial face-to-face encounters with them is a sign that he will take the role of the routinely pliant inmate. The occasion on which staff members first tell the inmate of his deferential obligations may be structured to challenge the inmate to balk or hold back his peace forever. Thus the initial moments of socialisation may involve an 'obedience test' and even a will-breaking context: an inmate who shows defiance receives immediate visible punishment. (Goffman, 1987, p. 22)

Whilst Goffman's research exposure to such obedience tests was necessarily limited to admissions and initial procedures within the institution, for persons

brought to the police station on arrest, expectations concerning such compliance and deference often stretch back to the moment of first contact with officers at or before the point of arrest. Resignation by suspected persons to the projected, deviant image of self assigned to them by officers during such initial encounters, coupled with both explicit and implicit requirements to support, sustain and confirm moral, legal and professional claims to self made by officers at this time, structure initial interactions into often heavily scripted affairs. Failure by suspects to conform and behave in these deferential terms can have far reaching ramifications well beyond the immediate and visible punishment of which Goffman spoke. Whilst it is typical to conclude that the informal interactional rules and expectations of such obedience tests flow from and in turn shore-up and help sustain and recreate the street-based occupational culture of policing, it is not often realised that deviation from or defiance of them by a suspected individual can lend official, formal support to police decision-making in case-disposal considerations. Within the Home Office Cautioning Guidelines any decision as to whether to administer or to withhold a caution turns upon police consideration as to the offender's level of remorse or regret concerning the alleged offence. The antecedent behaviour of the arrested person throughout the in-custody phase from (and indeed possibly before) arrest and up to the case-disposal decision-point, forms a significant element of this test, the cases detailed immediately below provide clear illustration of this.

A PC trying to calm down an aggressive and argumentative suspect..

PC 'You're doing yourself no favours are you mate, kicking up a fuss like this ...If you behave yourself you could get a caution for this but carry on the way you're going and we'll charge you no problem.'

SUS (tries again to pull away violently)..You ain't no mate o'mine so I ain't listening to your shit am I!

PC (sighs and looks at me)...can't do anyone a favour these days sarge, Oi! stand up straight and stop pulling with your arm for Christ sake you can sit down in a minute...I can see you've 'ad a drink sunshine (shakes his head and talk-sighs)

POMWC009

One PC talking to another about a case involving damage to a motor vehicle he had been the arresting officer in..

'I had been thinking of cautioning this bloke but he was such a stroppy fucker there was just no way he deserved it you know? So I just told the skipper that he wouldn't admit he'd done it even though he'd put his hands up when I questioned him about it.'

DMWC0010

A fellow custody officer recounting a case he had dealt with in which he had decided against a caution for a trivial offence in which the suspect had made a full and frank admission.

'....he was a shit, pig ignorant, y'know and I thought, right mate if that's the way you want to play it fine, tell it to the court and I put him on the sheet. The next thing I know the guvnor wants to know why I didn't consider a caution, so I quickly got the book out and decided that he'd shown no remorse for what he'd done and that's what I told the guvnor. I think its well out of order, if I decide not to caution then that's my decision, I'm the custody officer...what's

he (the inspector) gonna do, drag him back in and caution him because he doesn't agree with my decision.'

MWST0025

Cases MWST0025 and DMWC0010 above serve to highlight the problematic nature of the relationship between official rules, policy and guidelines and the manner in which these become transformed into social action through the interpretative and creative endeavours of significant actors on the custody stage. In MWST0025, the custody officer is aware that the power to define the situation within which his decision to refuse a caution can be understood, rests with him. The Inspector was not there and must rely on the description of circumstances (and indeed, an explanation of the meaning assigned to the suspected person's behaviour) as this is provided by the officer managing the case. Whilst the guidelines for cautioning presume that the requirement to have cautionable cases reviewed by an officer of Inspector rank or above provides adequate 'external' review and safeguard, such a mechanism cannot work at all in cases where the Inspector is not made aware of such cases because of prior decisions by custody officers not to entertain the prospect of a caution in the first instance for whatever reason. Even, as in this case, where post disposal audits cause case supervisors to question disposal decisions, custody and arresting officers represent formidable gatekeepers to knowledge concerning what went on and the meaning that it should hold. MWST0025 is significant in other ways too, for there is good evidence of ex post facto justificatory use of guidelines in this instance. Here, as elsewhere, guidelines do not drive, boundary and prescribe decision making or case disposal activity but are used as an accounting resource that renders police action sanctionable according to the prevailing rules. DMWC0010 likewise illustrates creative accounting procedures that subvert the intentions of the guidelines, transforming them into definitional resources. As has been previously suggested in chapter 2, attempts by the Home Office to ameliorate problems of inconsistency, multiple-cautioning and misapplication to overly serious cases

through a process of ever 'tighter' wording and phrasing of the guidelines will always be dashed upon the rocks of an occupational culture that sees cautioning as one further resource by which to realise personal and collective objectives and purposes.

...the domain of presumed jurisdiction of a legal rule (and an official guideline) is open ended. While there may be a core of clarity about its application, this core is always and necessarily surrounded by uncertainty ... no matter how far we descend on the hierarchy of more and more detailed formal instruction, there will always remain a step further down to go, and no measure of effort will ever succeed in eliminating, or even meaningfully curtailing, the area of discretionary freedom of the agent whose duty it is to fit rules to cases. (Bittner, 1970)

It is important to understand that provisions existent within the cautioning guidelines that require the level of evidence in cautionable cases to be that sufficient to secure a conviction had that case gone to trial, represent the same sufficiency test that custody officers are required to undertake before dealing with alleged offences by way of charge and prosecution. That is to say that if the evidence in a case is considered sufficient to administer a caution it is *ipso facto* sufficient to administer a charge. Logically this must be so to allow for prosecution in cases where the cautioning guidelines do not apply (previous convicting history for example). Informally, however, this provides a mechanism whereby behaviour which officers consider breaches deference, demeanour or compliance tests as constructed by them in the course of in-custody interactions, can be duly punished under the full cover of the regulations, whose subjective wording allows for such interpretative flexibility.

Remorse tests

These cases provide clear evidence of one instrumental use of cautioning (including the withholding of a caution) as a form of sanctioning device used to pursue an officer's program of control. This is only possible within a micro-cultural environment where rules and regulations are performative tools for actors rather than constraints upon such performances and where such rules, as 'facts' are not transcendent but rather what Garfinkel would call a 'practical accomplishment' (Garfinkel, 1992, p.1 and Zimmerman, 1974, p.128). In such cases, the official cautioning and case disposal directives do not circumscribe police behaviour, shaping it and directing it along official, regulative or statutory pathways. Such rules are used retrospectively to decision-making as a frame within which a suspect's behaviour can be redefined through post hoc re-interpretation, justifying the decision reached. Action interpreted as 'stropky' by an officer at DMWC0010 or 'pig ignorant' at MWST0025 which fails to meet **individual** officer expectations as to what constitutes **for that officer** correct and appropriate behaviour, in accordance with his/her informal interactional requirements (requirements flowing from the culturally specific stock-of-knowledge existent within the occupational group), drives informal sense-making and decision-making activity (the refusal of a caution) which must **subsequently** (i.e.: *post facto*) be re-aligned with official discourses on cases which do and do not meet cautioning standards. Here 'stropiness' or 'pig ignorance' are reconstructed (either verbally or through official records) through the adoption of official terminology drawn directly from the regulations as 'inappropriate levels of remorse for the offence alleged' pushing the case beyond the boundaries of cautionable circumstances.

The pivotal behaviour, whether it challenges police control, falls short of compliance, breaches due deference, fails turn-taking and sequencing arrangements or threatens to undermine officer claims to a moral, professional and truthful self is typically antecedent to the decision to prosecute or withhold a

prosecution. The various negotiational disadvantages suffered by suspects throughout the in-custody process, disadvantages which are sustained through and amplified by the various mortifications of self, invasion of egocentric territory and the spatial, temporal and interactional demarcation and separation between suspect/officer(s) and between officer/officer focussed gatherings, serve to ensure that the construction of officer accounts of cases and of suspect types are not challenged or challengeable. Indeed, suspects may remain unaware of that facet of their stream of behaviour that is subsequently held-up as evidence of a cautionable or a non-cautionable category. The plasticity of remorse tests ensure a high degree of interpretational latitude for officers during the construction of the meaning of action which underpins police casework, allowing them to become practical resources-at-hand in officers ongoing control of definitions of situations.

In other cases, the defendant may create a negative image by refusing to conform to police authority or by being 'awkward'. Consequently she may be placed into a different police category than her behaviour would normally warrant thus:

AT-A089 – The defendant had no previous convictions and was arrested for being drunk in a public place. The arresting officer, who had not recommended that he be charged, said that A089 had been getting on the custody officer's nerves – 'mouthy' (shouting whilst he was dealing with another prisoner) but not physically aggressive. After the arresting officer left, A089 was charged with being drunk and disorderly. The custody officer was initially reluctant to explain his decisions but made it clear that A089 had upset him:

Res: 'What was the disorderly behaviour?'

Officer: 'I can't remember'

Res: 'Was it at the police station?'

Officer: 'No, it was out on the street because it has got to be in a public place'

Res: 'Why was he charged?'

Officer: 'To be perfectly frank, you make your decision on what you see in front of you. If he gives you a hard time, say verbally, then you think, 'Oh yeah, he's obviously given the PC a hard time on the street and he's obviously of a disorderly nature and therefore we'll send him to court'. That's how I decide.'

(McConville, Sanders and Leng, 1991, p.114)

The administering or withholding of a caution as an outcome of a suspected person's behaviour whether as a precursor, cause or reaction to arrest and confinement is not restricted to stereotypical cases in which suspects are deemed to be problematic or 'anti'

A smartly dressed and articulate man of about twenty had been arrested for possession of cannabis, a small amount of resinous cannabis found in a matchbox. Discussion was taking place between the arresting officer, a sergeant and the Inspector I had called in to consider caution in this case. The suspect was in his cell at this time.

PS 'I think we should put him on the sheet guvnor.'

INSP 'Why? (uses officer's first name) We usually caution for small amounts for own use in cannabis cases.'

PS 'But you only have to look at him to realise he should know better, he's not your average 'scrote', a well educated and intelligent person should know better that's all I'm saying

INSP 'We can't start deciding who gets cautioned and who doesn't based on what clothes they're wearing, or whether they drop their h's or not, I need more than that.'

PS 'If you ask me we shouldn't be cautioning anybody for possessing Class B drugs.'

INSP 'Well that's the way of the world these days. If I put it up to CPS without any other supporting evidence they'll simply bounce it back saying caution, you know that.'

MWSDR0050

MWSDR50 is an interesting case for a number of reasons. Firstly, the focussed gathering constituted by the Inspector, Sergeant and arresting constable, whilst discussing the case in isolation from the suspect (who is incarcerated in a cell) is nonetheless engaged in a process of negotiating what meaning the case, the suspect and his appearance and demeanour should hold for them and how that meaning should ultimately drive their decision making and case disposal action. Interestingly, the sergeant inverts typical thinking about just deserts here by suggesting that the suspect, described as 'a well educated and intelligent person' should be charged and sent to court to face trial as a person who should have known better than to possess cannabis. Despite many such cases turning upon the outward appearance, eloquence and behaviour of suspects, as illustrated at POMWC009, DMWC0010, MWST0025 above, the Inspector here resists attempts at interpreting such factors as relevant to the case disposal decision-making process. He doesn't refuse completely to turn away from the prospect of charging the suspect with possession of drugs but demands more to go on, he is clearly engaged in a process of negotiation at this stage. The sergeant's response is a disclosure, he makes explicit his views on the prospect of administering adult

cautions for drugs offences, this is a crucial point, for each officer carries with them a personal taxonomy of cautionable cases and circumstances built upon a personal working biography. This personal classificatory system underpins what I will term *personal precedence*. By this I mean that individual officers will determine whether a current case is one for which a caution should be administered or withheld by comparing its circumstances with previous cases in which they have made or withheld cautions before. An officer who has in the past elected to caution for personal possession of small amounts of cannabis for example, will be likely to caution in similar cases in the future. Conversely, where an officer has chosen to prosecute in such circumstances he will have set a personal precedent which will inform and underpin future case disposal activity in similar circumstances with other suspects. 'The seriousness of the accused's actions will be a matter of opinion. One officer's judgement of the seriousness of an offender's actions will not always be the same as another's' (Westwood, 1990, p.389). As the guidelines provide no tariff or other classificatory set that defines the criteria of seriousness, such personal precedents play a significant part in case disposal decision-making, a point well illustrated in cases DRFWC007 and DR0084 below:

PC1 'My mate who works up town was saying that they get so many in for drugs like ecstasy and speed that as long as it's for their own use...a small amount...they're giving 'em cautions for that.

PC2 (nodding his head with some force, interrupts)...yeah and soon will be givin 'em cautions for shooting-up on smack,

PC1yeah doing E and stuff...It'd be such a result here they'd go straight on the sheet (laughs)...if they want to do that stuff they oughtta do it up town obviously'

DRFWC007

I had arranged for a suspect to be removed from his cell so that I could formally charge him with an offence of possessing tablets which he had openly admitted were amphetamine sulphate. When I told him that I was about to charge him and from there to fingerprint and photograph him and to arrange for bail enquiries to be conducted, he said to me

SUS 'This is fucking stupid, I got done for this last year up town and they didn't do me then like you lot.'

ME 'What do you mean, they didn't do you, do you mean they didn't charge you?'

SUS 'No they never, they just cautioned me and that was that.'

PC 'Bit of a fucking result then.'

DR0084

Personal precedence

When officers construct the cautionability of a case by controlling how guideline provisions such as 'the seriousness of the case' are to be defined they look for precedent from within their own classificatory schema of previous cautioned cases to ensure conformity with it. Cases which they define as of equal or greater seriousness than previous cases for which they withheld a caution will likewise become subject to charge and court proceedings. The following case FWCOW0012 provides a clear illustration of this:

An 18 year old female had been arrested for possessing a jif lemon container containing ammonia which she admitted she intended to use against another woman whom she had been having an argument. I was about to prefer a charge for an offence of possessing an offensive weapon capable of discharging a noxious liquid when the duty officer, who had been making an entry on a custody record in the custody office became aware of the case.

Insp. 'This sounds like we could caution as she has no previous and she admits the offence.'

Me 'But she's carrying ammonia that's dangerous stuff, I think it's too serious for a caution'

Insp. 'I've cautioned for knives, this is no different write the forms up and I'll administer the caution before I go.'

FWCOW0012

The inconsistent administration of adult cautions can then be explained in part by the workings out of such personal precedents. DRFWC007 provides an example of this process in which geographical intra-force inconsistency arises from the prevalence and thus routine nature of a particular type of offence in a particular policing area leading to a reduced perception of its seriousness for officers. Within other (even nearby) areas such an offence may be far less prevalent and may still be viewed as sufficiently serious to warrant charge and court proceedings. As the officer in case DRFWC007 suggests; *'...if they want to do that stuff they oughta do it up town obviously'*.

I was busy writing out a number of charges when my concentration was disturbed by the arresting officer of one of the suspects I had in custody for a vagrancy related offence.

PC *'Sarge, regarding that tosser (uses suspect's last name) I brought in for pissing up that old geezer's fence?'*

ME *'Yeah what about him?'*

PC *'Well I've just bumped into the guvnor in the canteen and he asked me about the job I've got in and when I explained it he asked me if we were considering a caution.'*

ME *'And I can see you don't agree'*

PC *'Come off it sarge, the bloke's stood there with his cock out just pissing up this pensioner's prize carnations and making a big horrible stain on his garden fence.'*

ME *'He was well tanked-up, did he do it intentionally?'*

PC *'That's not really the point though is it sarge? He's given this old bloke a bit of a shock and the old geezer's in a right old state about his fence, kept going on about if his missus had been alive to see it, I bet his fence will stink for a while too.'*

This was a case that I eventually handed over as I had come to the end of my shift. When I came on duty next I noticed that the suspect had been charged with criminal damage to the fence and with a public order offence involving behaviour likely to cause alarm, harassment and distress.

The next time I saw the officer I spoke to him about the case. He said that he'd managed to get the suspect charged largely because of the change in shifts, the early-turn inspector had known nothing about the case and this officer had spent time putting across his viewpoint as to the seriousness of the behaviour and its impact on the victim. I asked him if he had mentioned to the early-turn duty officer that the night-duty duty-officer had raised cautioning as an option, he openly admitted he had with-held this information, fearing that the early turn inspector may have felt obligated to support his fellow inspector and pursue a caution.

MWCVAG00068

Although the 1994 Home Office guidelines on cautioning rules out dealing with the most serious cases by way of formal caution, it primarily refers to those offences that are classed as 'indictable-only' offences (i.e.: those which must be submitted for trial by jury at a crown court). It states; 'Cautions have been given for crimes as serious as attempted murder and rape: this undermines the credibility of this disposal. Cautions should **never** be used for the most serious indictable-only offences such as these, and only in exceptional circumstances (one example might be a child taking another's pocket-money by force, which in law is robbery) for other indictable-only offences, regardless of the age or previous record of the offender.' (Home Office, 1994, para,5). MWCVAG0068 provides a good example of an officer defining the cautionability of a case as an outcome of his interpretation of the offender's behaviour, but here the guidelines are being adhered to more closely for they do provide that: 'Before a caution can be administered it is desirable that the victim should normally be contacted to establish – his or her view about the offence (and) the nature and extent of any harm or loss and their significance relative to the victim's circumstances.' (Home

Office, 1994). As with statute law, the guidelines allow for consideration of the impact and consequences of an offence upon the victim to shape subsequent understanding of the seriousness of the offence, that is to say whether the offence was serious for the victim, 'The theft of £5 from a pensioner may be more important to the victim than £1000 from a business.' (Evans & Wilkinson, 1988, p.51). In this case the arresting officer has placed emphasis on the alarm and distress displayed by the victim as a means of defining the actions of the suspect as too serious in their consequences for a caution to be considered, in this way he exerts control over the definition of this situation as it is understood by other officers.

The guidelines are an interactional resource then that can be used by officers to pursue their ongoing purposes-at-hand. Those provisions that support and progress police aims and objectives are chosen as a focus and others that undermine police intentions are ignored or played down. Had the officer wished to pursue an agenda which sought a cautionable outcome, aspects of the case such as its petty nature, the fact that the offender was drunk, his age, previous offending history or an assertion that a prosecution was not in the public interest could just as easily have been chosen for emphasis. The guidelines seek a balance between competing needs, the needs of the victim, the needs of the public at large, the needs of the suspect and the needs of the state. The victim may need compensation or reparation, recognition or retribution, the public need to be protected from serious crime and 'dangerous' offenders whilst also being protected against unnecessary and possible costly prosecutions that could have been diverted. The suspect needs to be diverted from injection into the criminal justice system (where this is considered appropriate) in an attempt to turn him or her away from future offending and the stigmatising consequences of the court and prison system, whilst the state needs to have a consistent and credible case-disposal mechanism. My research has shown that efforts to balance these competing and conflicting needs has provided police with a high degree of decision-making and case disposal latitude by allowing them to selectively focus

on that dimension of the guidelines that best serves their ongoing, often individual project and objectives. Case MWCPO0026 offers another example of how officers utilise the guidelines as an interactional resource in this way:

This was a case of arguing in the street where the suspect had been arrested for a minor public order offence. The following is a conversation I had with the arresting officer about case disposal.

'I want him to go to court on this one serge he can't just go around thinking he can pick a scrap with someone just because they don't agree with 'im, he's well out of order.'

ME 'Has he got previous?'

PC 'No, none '

ME 'Does he admit it?'

PC 'Yeah'

ME 'Did he injure the other bloke?'

PC 'No, I think we got there before he got that far, but I reckon he would have.'

ME 'Well, it's a minor offence, he's of previous good character, he admits it, he'll probably get bound over or a con dis at court, what's his attitude to the offence?'

PC 'If I said he couldn't care less would that mean you couldn't caution him?'

ME 'Well is that what he said?'

PC 'Yeah, yeah that's what he said all right (smiles)

I inferred that the officer was attempting to construct an interpretation of the suspect's behaviour that would fall outside the guidelines and thus ensure that he was charged with the offence. He could do this because, as I was not on the street at the time of arrest I become dependent upon the relaying of 'facts' concerning the incident in order to make sense of the arrest and the behaviour that led up to it. The arresting officer is able to frame this information giving it in such a way that emphasis is placed on certain aspects of the case and less on others.

MWCPO0026

McConville, *et al.* (1991) describe this process of amplifying or suppressing elements of cases to align them with or set them against cautioning provisions as either 'downward' or 'upward' case construction, that is to transform a case from serious to petty status or vice versa through control of arresting officer testimony as 'facts-of-the-case. They provide an illustration from their research data that bears many similarities to MWCVAG00068 and MWCPO0026 above:

CE-A039 – The suspect was arrested after entering V's garden. The 'facts' were related to the custody officer. According to this version, A039 was drunk and had threatened V with a half brick. On this basis, the custody officer told the constable to prepare a file and charge A039. The constable, however, was shortly to go off duty. Accordingly, in the words of the custody officer, the constable 'related a slightly amended version of the facts to the

Inspector before he went off duty' in order that A039 be cautioned.
(McConville, et al, *Ibid.*)

This control of meaning frames by officers is a significant occupational tool and one that I will examine in more detail later in this chapter within the section 'control of the case'.

Control of the caution and instrumentality

To this point I have considered two main control dimensions of police-work utilised within the 'home-territory' of the custody suite, namely the control of setting and the control of the suspect. My research data points to the existence of two further significance control dimensions that coalesce to shape and drive police case disposal activity; the control of the caution and the control of the case. It is to the first of these that I now turn.

In 'The Case for the Prosecution' McConville, Sanders and Leng describe and illustrate a number of instrumental uses for formal adult cautioning. In case CE - A039 immediately above they suggest that police utilise cautioning as a caseload/workload easing tool, elsewhere they offer other uses; to protect informants, to avoid embarrassment and to overcome problems arising from insufficiency of evidence (McConville, *et al. Ibid.* pp.111-135). Here then the meaning that cautioning holds for individual officers and indeed for the occupational culture within which individual meanings are situated and find context is one of means to other ends, both personal and organisational, rather than as a case disposal end in itself.

For cautioning to become both a symbolic and an instrumental activity, at one and the same time, both connotative and denotative (Holdaway, 1989, pp. 69-70 and Manning 1977) is a consequence of its being very much a hidden process within a hidden world. As has been said above (and within chapter four), it is a case

management process that is subject to no external review or audit and exists under the total control of the police themselves throughout every stage from inception to case closure in the form of 'accounting procedures' which serve to provide an official and procedurally valid formal version of events for senior officers. (Sanders, 1997, p.1056).

Police accounts and police records do not reflect the social relations which have occurred; rather they suppress alternative accounts and resolve the situation (Burton and Carlen, 1979, p. 137)

'It's gotta be a caution ain't it, it's such a piddly amount of gear it ain't worth the effort of all the paperwork'

When talking about a case of shoplifting during which the suspect had stolen a small amount of cosmetics.

TMWC003

An overheard conversation between a PC and a suspect held in a cell corridor..

'Listen, I'm busy and you want to get home, you just sign to say you accept a caution, it gets rubber stamped by the duty officer and that's it...a slap on the wrist 'know what I'm saying here, neither of us need the hassle of a drawn out investigation.'

TMWC005

Cases TMWC003, TMWC005 above and GEN0091 below illustrate instances whereby a caution is being considered as a means of workload easing, either in terms of paperwork or time, and in the latter case as a form of inducement to the suspect as a means of early release. This easing of workloads is possible because cautioned cases require only the minimum of case-file completion sufficient for filing within the police station. The file is not required for court purposes and will not be subject to external review. The suspect cannot appeal against a caution nor is there any likelihood of the case being re-opened at the request of his legal representative. It is quite literally a closed case.

I overheard an officer explaining why he had asked the custody officer to caution his prisoner for what the probationer obviously felt was a 'good job' (in other words a serious offence that should be submitted to the CPS for trial at court)

PC1 'It's a fucking doddle book 'em in and bag up the property, write some quick arrest notes, do the checks on PNC and with cautions index and voila, the guvnor says the words, the prisoner signs the forms, he's then finger-printed, photographed and out the door. Hour tops.'

PC2 'But it was ABH, I mean the other bloke lost a tooth and had a split lip.'

PC1 'Six of one and all that, it was a fight, he gave as good as he got, it wouldn't have gone anywhere. He already said it was self-defence. Anyway, we can go back out now.'

MWCA0078

Cautions are being used to ease workload. What you find is that if the custody officer is bogged down with cases, they start using the caution. Although it says so on the form the victim is not asked... In some cases the defendant refuses to sign but it is still used. I don't know whether it counts as a caution or not but if he won't sign it the custody officer will say 'fuck off' and use it still. The only trouble is that we act as judge and jury in these cases. (McConville, *et al*, P.82)

A colleague was recounting his night duty week to me one afternoon, which had been extremely busy. At one stage during the weekend he'd had to put two and in some cases three suspects in the same cell and had radioed the duty officer to explain that he was pretty much full-up and that any other people arrested would have to be diverted to a nearby station. The duty officer has responded by asking if he couldn't caution the more petty cases and free up some space that way.

GEN0091

By arguing that case disposal activity is based on instrumental objectives is not of course to say that in certain circumstances, those cases involved would not have resulted in a caution had the guidelines been followed and the officer not been working towards another agenda (the theft by shoplifting of a small quantity of cosmetics as at TMWC003 being a possible case in point). But case and workload easing do represent instrumental uses of cautioning and re-enforce examples provided by McConville, *et al*, some years previously. The instrumental deployment of cautions represents a significant means by which officers control the meanings of cases. This is fundamental, for the instrumental use of cautions shifts their focus and emphasis away from the suspect, the victim and any loss or harm occasioned and towards officer or organisational needs and ends. Cautions

cease to be about diversion or the justness of disposal decisions based upon the merits of a case or a suspect's offending profile and start to be about time-saving, cost-saving or face-saving.

Avoiding case discontinuance

The prospect of cases being discontinued by the Crown Prosecution Service (CPS), typically as a result of insufficient evidence, can be another reason for opting for a caution for reasons other than those contained within the official cautioning guidelines. 'The Crown Prosecution Service does not support the proposition that a bare prima facie case is enough, but rather will apply the test of whether there is a realistic prospect of conviction' (Crown Prosecution Service Code for Prosecutors). Where there is not enough evidence to ensure a realistic prospect of conviction, cases will be discontinued. Such discontinuances can represent a source of both frustration and embarrassment to individual officers and to the organisation alike. To avoid such an outcome, police actively filter those cases they submit to the CPS for their consideration and continuation following charge or summons. Cases that are dealt with by way of caution or no further action (NFA) are not submitted to the CPS and therefore cannot (obviously) be discontinued (as they have not effectively been cases that have started the prosecution process in the first place). Filtering of cases on the basis of both weight and sufficiency of evidence will result in some cases not passing this internal test and it is here that a dilemma arises. The official cautioning guidelines require that 'There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction' (Home Office, 1990) this is an identical sufficiency test to that invoked by the CPS. If cases are considered too weak by police for submission to the CPS they are, ipso facto, insufficient to offer a 'realistic prospect of conviction' in keeping with the requirements of the official cautioning guidelines and as such the case cannot be cautioned and must be NFA'd. This is not what happens. '..some suspects (are) cautioned precisely *because* there is insufficient evidence.' (Sanders, 1997, p.1071). Indeed, my

research data shows that cases considered evidentially insufficient for submission to the CPS are routinely cautioned as a means of securing a 'result' by way of 'clear-up' as can be seen from : DEMWC006, MWCT0016 and MWDCF0045 below:

'it's not gonna run, they'll go for a discontinuance and it will end up being a waste of effort and paperwork.... at least a caution will be a result, if we tell him we could charge but are gonna offer him a chance he might go for it (mutters) let's hope so anyway.'

DEMWC006

PC 'Sarge, I've spoken to the witness and, to be honest the ID's a little sketchy, I was thinking that maybe we could go for a caution and that way at least we would get a clear-up.'

Me 'But without sufficient ID evidence I'll have to NFA it.'

PC 'But I think he'll have the attempt in interview.'

MWCT0016

'Sarge I have had a chat with the DI about (uses name of case) that false accounting job and there's all sorts of problems with it in truth. We both feel that the CPS will just bosh it so the DI said if you got the custody record and caution forms together, when he returns on bail tonight he'll come down and administer it himself if he's not tucked up.'

MWDCF0045

Sanders provides a very similar example of this instrumental use of cautioning from his own research, a study of three police forces between 1981-3. '(ED050) D Climbed a lamp post and knocked off the a road sign, damaging it. He stated that '... it wasn't wilful' and the arresting officer said 'there is no evidence to prove any intent' .. D was nonetheless recommended for caution: the DCI said he would have prosecuted had the offence been easily provable, but as it was this 'was the easy way out'. Although it was 'not quite right' to caution without an admission he was sure D would accept a caution.' (Sanders, 1988, p. 515)

The practice of cautioning cases where the supporting evidence has been found insufficient for submission to the CPS leads to net-widening. Officially, cautioning is seen as an alternative to prosecution, a diversion from the stigmatising effects arising from entry into the criminal justice system with its associated labelling of offenders by courts and prisons. Unofficially cautioning becomes in addition, an alternative to taking no further action, despite requirements for evidential sufficiency explicitly contained within the guidelines that preclude this. 'Cautions are therefore a convenient way of punishing minor suspected offenders whose cases are weak.' (Sanders, 1988, p.515)

To return to the example of police discretion, where the police used to have two options - screen right out (by taking no further action) ...or process formally (by way of a charge or summons) they now have the third option of diversion. It is this possibility which allows for net extension and strengthening. For what happens is that diversion is used as an alternative to screening out (releasing with no further action or via an informal warning) and not as an alternative to processing..(Cohen, 1983, P.52)

Securing intelligence

Decisions to administer formal adult cautions in cases where the supporting evidence is insufficient to secure a 'realistic prospect of conviction' provide officers with an additional means of controlling the definition of the offending situation and its potential outcome in order to further their individual or collective purposes-at-hand. This is possible because cautioning is '..wholly under the control of the police (with) no possibility of external review (and) because they know that the decision to caution is conclusive and will not be subject to further scrutiny by either prosecutors or defence lawyers' (McConville, et al, op cit., pp.77 & 135) But what police purposes and projects are likely to be realised through case disposal activities which directly contravene the official cautioning guidelines? They are manifold and include not only achieving 'clear-ups' and enhancing performance indicators but also include expressive ends such as re-affirming control and authority as well as intelligence gathering and monitoring goals such as the tagging and flagging of suspects for surveillance and targeting purposes and the protection of informants. 'The police want to have on record suspects who are not prosecuted, and for these purposes legalistic questions of evidence and admission are trivial distractions.' (Sanders, 1997, p.1072). '... the opportunity for police to extend the net of surveillance and intelligence, or to find out more about particular young people who may be suspected of particular crimes. In extreme form, such a viewpoint can suspect all such police initiatives of being part of an intelligence gathering conspiracy.' (Brogden, Jefferson and Walklate, 1988, p.110). There is also the prospect of using cautions as currency in exchange for information, for as Hobbs and Rock suggest:

The relationship between detective and informant hinges upon the ability of the officers to coerce those with information to divulge it.
(Hobbs, 1989, p.208)

The cost-benefit approach to policing is reliant upon a state of mutual reciprocity, which is characterised by neither side controlling the other. (Rock 1973, p.197)

As with any trade, a deal whereby officers seek information from suspects requires some form of remuneration in return and in certain circumstances this remuneration can be the offer of a caution for a case in which the suspect/informant would typically expect to face prosecution and trial. It is in just such circumstances that offences normally considered too serious, including indictable-only offences, come to be dealt with by way of caution. Police entrepreneurial activity deals in what Rock (1973) has termed cost-benefit policing and the mutual reciprocity mentioned by him is a caution for information.

The use of informants, however, places obligations upon the police to deal 'fairly' with informants and creates tensions between the desire to control crime committed by the informant and the need to keep the informant out on the street to incriminate others. This tension can lead to NFA or a caution. (McConville, *et al*, *Op Cit*. p. 110).

The suspect had been arrested some weeks previously for suspected false accounting and had returned on bail to allow the officer to complete enquiries. Having booked the suspect back in, he had been placed in a small room to talk with his solicitor and the officer in the case returned to talk to me about what he intended to do with the suspect on this occasion.

DC *'Sarge I've had a chat with the DCI and we'd like to keep this bloke sweet, there are others well at it and he's given us the nod that he'll give us a good steer in return for a bit of help with*

his case. The DCI is happy to caution him for theft, he's got no previous and he's being very helpful with our enquiries, he's a young man with a new family.'

Me 'What was he originally nicked for?'

DC 'Suspected false accounting.'

Me 'Does the evidence support that offence?'

DC 'It's a bit thin, more like he's had his hand in the till.'

Me 'How much are we talking about?'

DC 'Over time, maybe a grand and a half'

Me 'It's all a bit heavy you know, theft of fifteen hundred quid, for a caution, anyway I'll call the duty officer in, it's his decision.'

DC 'Cheers Sarge.'

The Inspector was called and the DC had a similar conversation with him that he'd had with me and the suspect was cautioned and released without comment.

MWDCT0036

An arresting officer was speaking to a colleague who had come in to help me out in the custody suite as we were particularly busy that day:

PC *'I was thinking of maybe offering him a caution for the tax disc if he could come up with the name of the geezer that he said he'd brought it from sarge, but he's not prepared to give up this blokes details to us, maybe it's his mate or a family member, anyway, I've written some sample charges out for you as I can see you're both up to your eyes in here today.'*

MWCF0053

DC *'Sarge, this scrote (uses suspect's name) who we've got in for robbery, he's a known associate of (provides another name) who we think is well active and involved in nicking from cars (gives details of a location). We think (uses suspect's first name) might bubble his mates if we let him walk on this job and he could turn out to be a good informant in the long term. I've spoken with the DI and he suggests that we might caution him for this job.'*

ME *'I can't see the guvnor being happy, this blokes got a lot of previous and the arrest notes easily support a charge of robbery.'*

DC *'If that's the case the DI will give the caution.'*

ME *'What about the victim?'*

DC *'I'll 'ave a word with him and keep him sweet.'*

ME *'And what grounds are we going to use to write up the custody record?'*

DC *'I've thought about that, public interest factors, remorse and attitude.'*

ME 'problem is it's a very serious offence and he's got loads of previous.'

DC 'I'll get the DI to come and speak with you sarge if you're not happy'

ME 'I can understand the argument. The DI's going to have to clear it through the Chief Super, he'll only pick it up when he checks the books next in any event.'

MWDCROB0076

Cases MWDCROB0036 and MWCCROB0076 above, provide graphic examples of serious offences; false accounting of over a thousand pounds in one case and robbery in another, being considered for caution on the instrumental basis of securing or maintaining informants and/or information with the prospect of locating other suspects and other related offences. In such circumstances the caution becomes a form of payment for services in the form of intelligence, enabling officers to pursue a wider crime-control agenda (Packer, 1969) in the form of increased efficiency through further arrests and clear-ups. In MWCCROB0076 the officer makes explicit the process by which provisions within the official cautioning guidelines are used *ex post facto* as resources in an accounting procedure that will render the official documentation of the case unproblematic with regards a caution in such circumstances. As Hobbs so poignantly describes the process in his book 'Doing the Business' (1989) such officers are actively engaged in a form of entrepreneurial policing activity, buying and selling in a market place where intelligence that will 'shop' associates and uncover stolen goods are the commodities to be purchased, and cautions or NFA's the payment required.

Avoiding trouble

A further significant response to the question of police motive in constructing cases is offered by Norris who argues that:

The patrol officer's decision to act in particular circumstances is therefore affected by a situationally informed, culturally defined reading of organisationally and legally prescribed 'rules'. The principle concern of the officer is the avoidance of negative sanctions, either from the organisation in the form of disciplinary proceedings or the loss of perks; or from the public, in terms of challenges to authority which entail physical or psychological harm. (Norris, 1989, p.91)

Whilst I feel Norris overstates the position by suggesting that trouble avoidance is an officer's 'principle concern' in the reading of and orientation of action towards situations, my data does support the selection of coping and controlling strategies by officers which aim to avoid what Chatterton terms 'on-the-job' and 'within-the-job trouble' (Chatterton 1978 , p.49). Where face-saving or embarrassment limitation is required following arrest, the caution represents a crucial resource whereby officers can side-step such unsavoury outcomes whilst at the same time securing performance targets and clear-ups.

The instrumental use of formal adult cautioning enables officers to pursue either individual or organisational ends through case management means and to construct cases by controlling the definition of key aspects of the unfolding custody situation to facilitate this. But in cases where a caution becomes a case management end in and of itself, the meaning it holds for officers directly impacts upon their preparedness to use or withhold it. 'The police view tends to be punitive. They think that adults knowingly commit offences and ought to be punished by the courts. This itself is linked to the widespread belief among the

lower ranks of the police that a caution is a 'let-off', an inadequate response to criminality and an insufficient reward for the efforts of officers who have successfully established the case for the prosecution.' (Evans, 1991, p.599). 'The formal view of the caution is not internalised by the police. For the police the caution is essentially a 'let off' having few if any adverse consequences for the subject.' (McConville, *et al*, 1991, p.78). 'The custody officer is supposed to be a protection here ... but most custody officers, like police officers in general, are against extensive cautioning, for adults in particular.' (Sanders, 1994, p.236). This view of the caution was widespread amongst the officers with whom I worked and underpinned much of their thinking about its use in case disposal decisions. Where a caution did not progress an officer's purposes-at-hand it was often used only with reluctance accompanied by feigned and cynical altruism and generosity, what Lee describes as 'degradation ceremonies'. (Lee, 1995, p.326) as can be seen from the cases I have cited below:

Insp. 'The sergeant has told me all about this case and has asked me to consider whether or not to caution you for this offence, do you agree to be cautioned?'

Suspect 'Yeah, s'pose.'

Insp. 'You don't sound very thankful, do you think you deserve a caution, maybe we should just send you to court and let the Magistrates decide, what d'you think?'

Suspect 'dunno, caution I s'pose.'

Insp. 'I don't think you understand that we're doing you a right favour, this is a right result for you, come here and sign this form.'

(suspects grudgingly rises from where he had been sitting and avoiding eye-contact scribbles his signature on the form, the Insp. shakes his head and turning to me says...

Insp. 'Maybe we should have charged him.' (he takes his pen, signs the form and to the suspect) you can go once the sergeant has given you back your property but if you are brought in here again it'll be straight to court do you understand?' (the suspect says nothing and gives no other indication of having heard the comment, shaking his head again the Inspector leaves the custody area).

MWID0023

Whilst I was late turn custody officer, one of my colleagues enters the custody suite and tells me that he is doing a 12-8 today as he has someone bailed to return to the station following his arrest for motor vehicle interference.

Sgt 'I tell you what pisses me off, I've done all this work (holds up the bundle of case papers in a blue document folder and waggles it) and I've had to do a 12-8 rather than early-turn and all that's gonna happen is a fucking caution (talks in a mock legal voice) on the advice of the CPS. He's a right little shit, I tell you what, if it had been my motor he'd screwed I'd be none too happy to learn the bloke was getting a let-off like this, insurance or no insurance (shakes his head)

ME 'Has he got a 609 for this sort of thing then?'

Sgt 'that ain't the point, he just hasn't been caught at it before

MWSMVI0034

'You're a lucky chap because my officer's have decided that you deserve a caution. Personally I don't think anyone who goes around thieving should be let off so just think yourself fortunate that the officers who arrested you have persuaded me.'

MWIT0040

As Lee suggests, officers charged with the responsibility to administer cautions '... were typically concerned with manipulating the ritualistic aspects of pre-court justice through spacing arrangements or communicative techniques such as forcing eye contact.' (Lee, *Ibid.*, p.324). Such interactional techniques and presentational devices symbolise a punitive process which draws heavy parallels with judicial sentencing methodology. Here the 'cautioner' is fully in role as judge. Lee again: 'This dramatic staging of cautioning and enforcement of ritualistic boundaries of face-to-face communication sets the tone of pre-court justice.' (*Ibid.*). What is critical here is that such 'degradation ceremonies' underscore diversionary case disposals that lay claim to being non-stigmatising and non-labelling outcomes.

The ceremonial 'stripping of a man of his dignity' as a prelude to judicial punishment has been thoroughly analysed by Garfinkel (1956). What the cautioning system seems to have done is reproduce and institutionalize the degradation ceremony in the pre-court arena and to reinforce the role of the police (rather than the magistrate in court) as moral condemners. (Lee, *Ibid.* p.326)

The caution *is* a kind of sentence, a disposition with its own penal and dissuasive potential. (Dingwall & Harding, 1998, p.15. emphasis is in original)

It is perhaps unsurprising, given such cases as MWID0023, MWSMVI0034 and MWSMVI0034 above, that consideration to caution other cases under different circumstances should lead to refusal to caution *precisely* because this disposition is viewed as a 'let-off' when in fact what the suspect 'deserves' is punishment. That is to say that when officers construct, through interaction, the meanings that the suspect and the case should hold for those other significant actors who populate the cautioning stage, (i.e.: what type of person they should be defined as and what type of offence they can be understood to have committed) they do so in ways which presuppose punitive rather than diversionary outcomes as can be seen in cases CDMWC0010, MWST0025 and MWCPO0026 cited above and MWCT0019, MWCA0042 and MWDCT0083 below:

shakes head, apparently in mock despair) 'Well sarge he said nothing in interview, a typical no comment....(turns to suspect)...silly ain't yer, I was gonna let you off with a caution but you've screwed that up for yourself (shakes head again at which point suspect drops his gaze and looks at the floor)...it's a bit late to start feeling sorry for yourself, come on (proceeds to take the suspect by the arm and lead him towards his cell)...show him back in at 11.03.'

MWCT0019

(Pushes arrested youth into a seat at the edge of the custody area and leans over him) 'Stop being a prat and mucking me about. When I tell you to empty your fucking pockets and put your stuff on the table for the sarge to list I fucking mean it! You need to be

careful, I was going to be nice to you but keep on behaving like that and I'll make sure you go straight to court.'

MWCA0042

This case had been handed over to CID from night duty officers.

DC *'Sarge, in relation to (uses suspect's name) I've written out a couple of charges to put on his sheet...'*

ME *'Oh, the guvnor said to me that he was considering a caution in that job.'*

DC *'When I told the guvnor how he'd fed us a load of crap in interview, he agreed that he was clearly trying to 'ave us over.'*

ME *'So he's not happy to caution on that basis.'*

DC *'that's what he said.'*

I later spoke about the case to the duty officer who confirmed that he had decided to withhold a caution as the suspect had clearly lied about the case from the outset of the interview with the DC and that this dishonesty precluded a caution.

MWDCT0083

Control of the Case

When an arrested person arrives at the police station following initial arrest, the circumstances of the alleged offence and the evidence leading to the arrest of the

suspect are not known to the custody sergeant who is charged with a statutory responsibility to decide upon the continued detention or immediate release of the suspect. For the detention that began at the point of arrest to be allowed to continue at the police station, the custody sergeant must be satisfied that there is sufficiency of evidence to suspect an arrestable offence has been committed and that that the person arrested can reasonably be suspected to be the perpetrator.

Because the custody officer was not present when the arrest was made, did not witness what happened leading up to and during police intervention and did not speak with witnesses at the scene, he must rely upon the verbal testimony of the arresting officer for this information. As the meanings he draws about the offence and the offender are wholly dependent upon secondary information (i.e.: information provided by a third person which he does not know for himself), the custody sergeant is vulnerable to verbal accounts constructed by arresting officers that emphasise certain elements of the arrest whilst downplaying others. By fashioning accounts of arrests in this way, officers are able to exert control over the meanings that both the offence and the offender holds for the custody sergeant and accordingly can begin to shape resulting case-disposal decision-making.

Additionally, officers can present arrest evidence in a manner that aligns the facts-of-the-case with caution pre-requisites (or in ways that excites concern that a caution would be an inappropriate resolution in this case). Cases MWCD00067 and MWDC0021 provide examples of this process in action.

I was working overtime following late turn completing the processing of custody records from my shift when a suspect was brought to the station and presented to the night duty custody sergeant.

PC 'Sarge, I've arrested this man for being in possession of what I suspect to be a small amount of cannabis resin, found following a street search of his jacket (gives location of search) when I stopped a

vehicle in which he was a passenger and smelt what I detected as cannabis fumes within the car. I did PNC checks on his pars at the location and he is not previously known to police. He states that it's the first time he has used cannabis. This is the lump (places a small brown ball wrapped in cling film on the table in front of the custody sergeant but out of reach of the suspect). As you can see sarge it's a very small amount of what he fully admits is cannabis and which he has told me is for his own use. He has apologised to me on a number of occasions on the way to the nick. No one else was involved and he's been no trouble.'

This comprehensive verbal statement of the facts-of-the-arrest seem to me on reflection as predefinitional cautioning, by this I mean that the testimony contains within it a carefully structured checklist of cautioning pre-requisites that are largely redundant in providing grounds for arrest. They serve to define the historic situation in which the custody officer, not having been present at the scene, is provided with an opportunity to grasp the meaning of the actions of both the officer and the suspect as these occurred on the street, but at the same time the adherence of this case to the cautioning criteria is systematically flagged up whilst being interwoven within evidential information.

The possession of cannabis which itself is sufficient to prove an offence against the misuse of drugs act and to justify arrest, is grounded in its description as 'for personal use only', immediately contrasting this offence with the more serious possession with intent to supply. This is further amplified by the small amount discovered. Here there is further suggestion that the officer is creating a boundary of meaning around the incident.

The forensic necessity of analysis of the substance sufficient to provide admissible evidence that it is indeed a classified prohibited drug, is side-stepped by testimony of the suspects admission that it is indeed cannabis. This is, however, an evidential and procedural consideration that need not have concerned the officer until after the arrest had been fully processed. Its inclusion here is to play down complex aspects of the case in favour of casting it as largely unproblematic and routine thus playing-up its susceptibility to being dealt with on-the-spot.

Other legally unnecessary elements of the discourse include an indication that the suspect is of seemingly previous good character and that he shows due remorse for his actions.

MWCD00067

Having related the evidential facts concerning a case in which a man had been arrested for possession of a small lump of resinous cannabis, the officer went on to say to me:

'He's not given us any trouble sarge, good as gold actually, he has told me that it was for his own use and that he realises he's been a bit stupid. He's got no previous or nothing (he looks at me and nods).'

Each of these points are those that would need to be considered when considering the administering of a caution.

MWCD0021

Primary and secondary information

In their paper 'Police Decision making', Manning and Hawkins (1989, p.144) provide a model of police communicative information that usefully differentiates between what they term 'primary' and 'secondary' information. They suggest that 'primary information' is that information 'which first comes to police attention' and would include things seen, heard and said by the arresting officer on the street during the initial encounter between suspect and officer and between the officer and any victims and/or witnesses there may have been available. 'Secondary information' is that information 'which has been processed once or more by any unit within the police.'. Testimony in the form of 'facts-of-the-case' presented to the custody officer during the reception of the suspect at the police station is 'secondary information' in that it has already been processed by the arresting officer.

Case MWCD0067 provides a good example of the ways in which officers seek to control the meanings that cases should hold for custody officers through manipulation of such secondary information at the facts-of-the case stage. As I noted at the time: *'comprehensive verbal statement(s) of the facts-of-the- serve to define the historic situation in which the custody officer, not having been present at the scene, is provided with an opportunity to grasp the meaning of the actions of both the officer and the suspect as these occurred on the street, but at the same time the adherence of this case to the cautioning criteria is systematically flagged up whilst being interwoven within evidential information'*. I termed this process pre-definitional cautioning in an attempt to articulate the means by which a case disposal outcome is pre-supposed and pre-encoded through the careful explication of those features of the case which best support the outcome the officer seeks to secure.

I noted within Chapter 3 that: 'This has real consequences for subsequent decisions such as the decision to caution, for such decisions turn upon the meaning that the facts-of-the-case hold for the significant actors concerned. Such accounts serve to

frame the custody officer's perceptions of *what it must have been like*, accordingly, the selective and partial nature of such facts-of-the-case accounting create a framework of meaning which drives subsequent decision-making in particular directions. For example, the arresting officer may choose to amplify the suspected 'deviant's attitude on arrest whilst playing down the initial act which led to police intervention, anticipating that through such amplification, a particular definition of the situation will be constructed from which a certain case disposal decision may follow. From a Schutzian perspective, the 'intentional' focus upon discrete elements of his stream-of-consciousness of the reflected-upon event, allows the officer to decant only those elements that best serve his current purposes.' (Chapter 3).

As McConville, Sanders and Leng point out '...the officer's summary becomes the definitive account of the case on which later decisions are based... The control which junior officers exercise over evidence collection and the presentation of the case also permits characterisation of the suspect or the circumstances of the crime in a way which indicates the disposal of the case favoured by the officer dealing with it.' (1991, p.135). As one custody officer from their research states, 'I'm dependent completely on what the officers says happened.' (*Ibid.* p.122)

Officers are aware that the reports are not reproductions but reconstructions. The reconstructions are for a particular audience and therefore they are written in a style and manner which is framed by organisational expectations. (Norris, 1989, p.99)

As with written reports, verbal testimony of a suspect's actions are reconstructions, the form of words and content of this facts-of-the-arrest account and the actual happenings it seeks to explicate are what Manning terms 'parallel but slightly disjointed strips of experience' (Manning, 1982, p.126) which become understandable by virtue of the indexical nature of the way in which they are recounted, they are expressive of a range of meanings by which custody officers understand the legality and validity of arrests.

Properties that are exhibited by accounts (by reason of their being features of the socially organised occasions of their use) are available from studies by logicians as the properties of indexical expressions and indexical sentences. Husserl spoke of expression whose sense cannot be decided by an auditor without his necessarily knowing or assuming something about the biography and the purposes of the user of the expression, the circumstances of the utterance, the previous course of the conversation, or the particular relationship of actual or potential interaction that exists between the expressor and the auditor. (Garfinkel, 1991, p.4)

Accordingly, arrest accounts and written arrest reports are further means by which officers attempt to secure control over meanings and over the definition of the case and suspect, they are what McConville, Sanders and Leng term 'resources of case construction' (McConville, *et al*, 1991).

Even (custody) sergeants who wish to screen cases effectively find it impossible. Nearly all evidence on which they base their evaluation is presented orally by the officer(s) asking for the prosecution to take place. As the Prosecuting Solicitor's Society has said 'The view of the (custody) sergeant ... must therefore be gained from what he is told by the investigating officer. As an independent check this must be almost without value. Thus, information which could lead to a caution or no further action on grounds of too little evidence can be easily concealed from the decision maker. (Sanders, 1985, p.73)

This was a case of arguing in the street where the suspect had been arrested for a minor public order offence. The following is a conversation I had with the arresting officer about case disposal.

' I want him to go to court on this one serge he can't just go around thinking he can pick a scrap with someone just because they don't agree with 'im, he's well out of order.'

ME 'Has he got previous?'

PC 'No, none '

ME 'Does he admit it?'

PC 'Yeah'

ME 'Did he injure the other bloke?'

PC 'No, I think we got there before he got that far, but I reckon he would have.'

ME 'Well, it's a minor offence, he's of previous good character, he admits it, he'll probably get bound over or a con dis at court, what's his attitude to the offence?'

PC 'If I said he couldn't care less would that mean you couldn't caution him?'

ME 'Well is that what he said?'

PC 'Yeah, yeah that's what he said all right (smiles)'

I inferred that the officer was attempting to construct an interpretation of the suspect's behaviour that would fall outside the

guidelines and thus ensure that he was charged with the offence. He could do this because, as I was not on the street at the time of arrest I become dependent upon the relaying of 'facts' concerning the incident in order to make sense of the arrest and the behaviour that led up to it. The arresting officer is able to frame this information giving in such a way that emphasis is placed on certain aspects of the case and less on others.

MWCPO0026

Admission of guilt

The cautioning guidelines require that for a caution to be administered the suspect should openly admit guilt and provide informed consent to the caution (Home Office, 1994). This means that not only should the suspect admit the offence for which he is to be cautioned but that this admission of guilt should occur in the full knowledge of what both the admission and the caution mean. Because cautions are recordable on the Police National Computer (PNC), will impact upon police prosecution decisions should the person ever be arrested again in the future and because cautions can be cited within any subsequent court proceedings and as a result can impact upon sentencing, the consequences for the suspect of admitting an offence in pursuance of a formal caution are clearly significant. Such pre-conditions are ‘... due process safeguards ... but as mechanisms for protecting innocent suspects from administrative determinations of guilt they have been found wanting.’ (Sanders, 1994, p.231). ‘Although the police must have sufficient evidence of guilt and the (suspect) must also admit to it, the lesser safeguards involved (can lead to) ... the temptation to admit the offence simply to get it over with.’ (Brogden, Jefferson and Walklate, 1988, p.110).

In the absence of a legal representative, the suspect’s understanding of what a caution means and the consequences of admitting guilt and accepting this

disposition is driven by the way the officer describes these factors to the suspect. Once again, the officer is provided with further opportunity to control the definition of the situation for the suspect who must ‘ bargain in the shadow of the law.’ (Dignan, 1992, p.43). During my research I came across many instances where the due process safeguards of admission of guilt and informed consent were routinely adopted as case construction and management resources by officers who often saw no impediment to their manipulating such factors in pursuance of their own objectives as is illustrated in the following cases:

Me ‘and does he admit the offence? Has he said he did it to you?

PC ‘(laughs) when we explain he's up for a quick caution there'll be no problem about that sarge’

TMWC002

I was taking over from the outgoing custody officer and waiting whilst he released a suspect.

PS ‘Sign here.’

SUS ‘What here?’

PS ‘that's it, where I've put the cross, there on that line (indicates place on form).’

SUS ‘Is that for my property then?’

PS (Hesitates) 'um, yeah that's right, your property, soon as you've signed I'll get it out the bag and you can be on your way.'

I could clearly see that the form the man was being asked to sign was an adult caution form and not the property receipt box.

SUS 'What's going to happen now?'

PS 'You'll get a letter through the post saying whether we're going to take action against you or not.'

SUS 'Oh'

After the suspect had left I asked my colleague why he had got the suspect to sign an adult caution form like that. He said he had been very busy earlier and had neglected to get the caution form signed when he should have done at the time the caution was given.

GEN0077

A conversation between me and a suspect's legal representative concerning a case of fraudulent use of vehicle documents.

LR '..what are we talking here sergeant, a caution?'

Me 'There are a number of factors you know I have to consider before I can answer that, is your client prepared to admit the offence then?'

LR '(smiles) Well, let's just say that if you were minded to suggest a caution to your Inspector, I think my client would be inclined to accept that outcome.'

LRF0018

Case LRF0018 is interesting in that it is a suspect's legal representative and not the arresting or investigating officer that has negotiated the case disposal outcome and must convince the suspect that admitting guilt and providing informed consent is the correct course of action. This case illustrates that even with the intervention of an advocate the suspect can often remain isolated from those interactions in which key decisions are reached and suffer negotiational disadvantage as a consequence.

... the cautioning process is essentially *inquisitorial*. This process enables them (police) to create any necessary pre-conditions, such as the 'consent' which the suspect is required to give prior to being cautioned. So complete is the police control of these interactions that the official account is often reported in terms of 'the facts' without any attempt to engage in the language of proof ... Police accounts and police records do not reflect the social relations which have occurred; rather they suppress alternative accounts and *resolve the situation* (Burton & Carlen, 1979, p.137) Records which seek to reproduce legitimacy through the celebration of rational, democratic and consensual values, are always directed towards *closure*. The privileged status accorded police accounts generally ensures that closure takes place by suppressing and delegitimizing alternative accounts. (McConville, Sanders & Leng, 1991, pp.80-81)

We read, and read into the text based on our own background, knowledge and assumptions ...the text has a given force or effect which is not based on some evaluation of whether it is 'correct' or not ... indeed, it is difficult to think how any written or spoken text could convey 'facts' ... without recourse to conventionally appropriate textual formats. (Atkinson, 1990, pp. 4 & 15)

As McConville *et al* and Atkinson point out, police reports of cautioning circumstances are official discourses, police narratives which utilise 'appropriate textual formats' to align the social 'reality' of the offence, the suspect, the investigation and the offending biography of the individual with the official pre-requisites of the cautioning guidelines. They are what Atkinson terms 'a textual construction of reality' (1990) which render as unproblematic pre-conditions such as admission of guilt, informed consent, seriousness of offence, etc. They are essentially indexical, '..the objectivity of accounts are not independent of the socially organized occasions of their use. Their rational features *consist* of what members do with, what they 'make of' the accounts in the socially organized actual occasions of their use. Members accounts are reflexively and essentially tied for their rational features to the socially organized occasions of their use for they are *features* of the socially organized occasions of their use.' (Garfinkel, 1992, p.4). In this sense cautioning reports serve as an accounting tool, justifying police action and case disposal decision making, the 'socially organized occasion of their use' is in convincing internal auditors as to the validity and accuracy of the processes they describe by recourse to 'police talk', organisationally specific and quasi-legal rhetoric, that invites the informed reader to share in the textualised experience as if he were present during it.

Accordingly, such accounts are framed by the official rhetoric of legitimate police casework such that the phrasing, vocabulary, textual mechanisms and narrative devices utilised by the author excite within the informed reader a specific professional definitional response to the incident and the procedures adopted

sufficient to categorise it as a successfully managed case. This is possible because this informed reader shares with the author of the account a common stock-of-police-knowledge and a shared taken-for-granted natural attitude and orientation towards both the means and ends of practical police work. The informed reader readily comprehends the embedded sign-system within these official accounts as expressive indexical referents to a wider base of legitimacy that allows described events and procedures within police reports to be readily accepted as the practical reification of official definitions contained within guidelines, policy and law.

This evening I have been looking back over custody records in which suspects have received cautions and have noticed that they all conform to a very formal language and structure. The circumstances of the case are formulated in ways which articulate and confirm their adherence to the dictates of the cautioning requirements. Each aspect of the guidelines is evidenced through description of a particular facet of the case. I have to say that this includes many custody records that I have completed which have concluded in cautionable outcomes. They are official documentation of justification for a particular case disposal decision. To anyone reading any of these accounts they are absolutely unproblematic in terms of the justification of a caution in each case. No element of doubt exists in any record that I have studied here.

GEN0052

The Coercion/Negotiation relationship

I want to conclude this chapter with an examination of the relationship between the police use of coercion and control within interactions where decisions are made and the extent to which officers allowed suspects to enter into negotiations

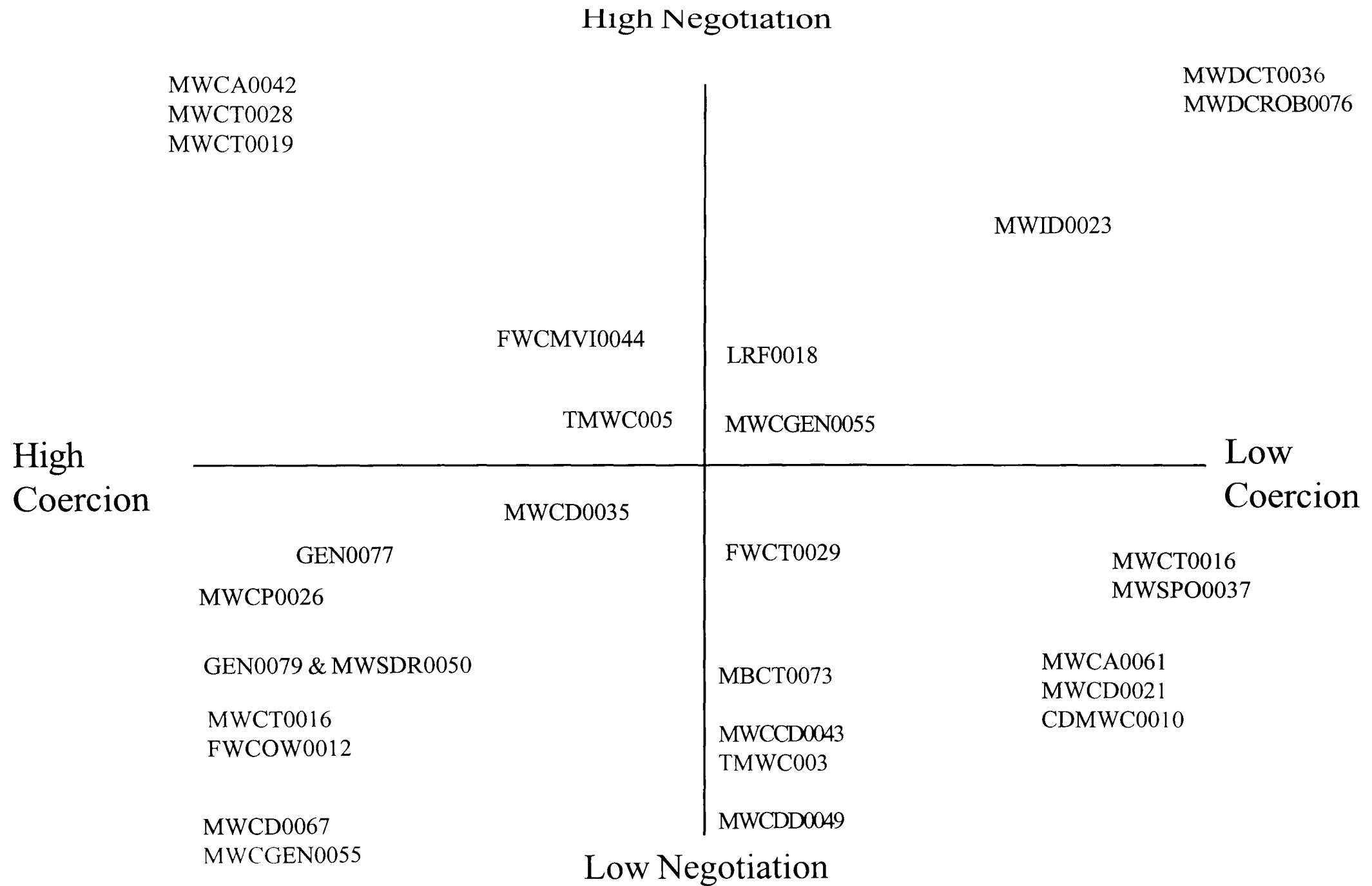
concerning case disposal during such encounters. To assist in this process I have mapped certain key cases onto a quadrant diagram that provides a graphical representation of this relationship and allows for the following possibilities:

1. Cases characterised by high levels of police/suspect *negotiation* and low levels of police *coercion*
2. Cases characterised by low levels of police/suspect *negotiation* and low levels of police *coercion*
3. Cases characterised by high levels of police/suspect *negotiation* and high levels of police *coercion*
4. Cases characterised by low levels of police/suspect *negotiation* and high levels of police *coercion*

An example of case 1 would be instances whereby officers sought to negotiate a caution with a suspect as an entrepreneurial deal-making activity in exchange for information.

An example of case 2 would be police instrumental use of cautioning to pursue personal or organisational objectives where officers presented the caution as a given outcome to the suspect without prior negotiation.

An example of case 3 would be the attempted manipulation of suspects' behaviour through inducement with a caution offered as a reward for compliance.



An example of case 4 would be the complete control of a case with no intervention by the suspect including cases where suspects and even other police decision makers are manipulated into accepting the officer's definition of the cautioning situation.

Examination of the quadrant diagram above reveals that most decision-making and case management activity involved little or no negotiation between officer and suspect, this flows from the isolated position of the suspect and the boundaries to and closed character of focussed gatherings formed for case management decision-making described earlier in this chapter and within chapter 3. The control of meaning by officers is best achieved without suspect intervention and provides officers with almost absolute control over how cases will be managed and outcomes assured.

Of particular significance is the spread of cases between high and low level coercion. A greater proportion of cases required officers to actively control and manage the manner in which cases and images of suspects were defined and constructed through interaction. This suggests that there was a significant requirement for officers to actively pursue cautioning dispositions or to actively resist such diversionary outcomes through case construction activity in order to secure their purposes and objectives in situations where, had they not so actively controlled the case it would not have been dealt with as they desired.

Where there was evidence of negotiation between suspects and officers, it was either as a means of controlling non-productive suspect behaviour such as non-conforming or challenging suspect interventions, or to bring 'stropky' individuals back into line through the offer of cautions as inducements, easing their behaviour (where officers make instrumental use of cautions to reduce workloads for example). Or alternatively such negotiations were part of a larger bargaining process where cautions were exchanged for information or to retain a relationship

between an officer and an informant in expectation of future information and co-operation.

What is clear from the analysis of my research data conducted throughout this chapter is that on entering the police station custody area at the point of reception, the suspect suffers multiple interactional disadvantages and impediments that undermine and shut off negotiational opportunities. The definition of the unfolding situation stretching back to the point of arrest and stretching forward to the point of release remains under the total control of the police. From questions concerning who the suspect is and what type of person he should be understood to be, through questions regarding his attitude to the offence and what type of offence it can be considered to be, to questions concerning just deserts and appropriate punishments, all are subject to definitional control and case construction. Within this cathedral of control the suspect sits on his wooden pew, bows his head and prays for a salvation that is unlikely to come.

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Chapter 7 – Towards a new system of formal adult cautioning

Conclusions and recommendations

Description, analysis and prescription are rarely, if ever, separable; research into the work of the police is informed by hope of change, sometimes dormant, sometimes active. Such commitment does not pre-empt impartiality. Without some appreciation of the fact that sociological research is concerned with real lives and, ultimately, with the question of what it means to be human, its bland statistical and theoretical monuments would all too easily be beatified and ‘isms’ would provide a haven of distortions. It is important for a reader to discern where value misleads, theory controls, prescription meets evidence. A writer should facilitate discernment as far as possible, constantly aware of the tendency to create in his own human image. Nevertheless, the requirements of scholarship oblige him tentatively to bridge thought and action, analysis and policy. (Holdaway, 1983, p.155).

This thesis set out to examine through research, how cautioning decisions come to be made by operational police officers within the daily round of routine exigencies that go to make up the police work-world. It is grounded on a set of theoretical presumptions that see cautions and the pre-conditions and criteria that attach to them, not as structural determinants that boundary and de-limit police action, but as a social achievement, a product of occupational culture realised through ongoing police control of the definition of the unfolding custody situation. The meaning of the caution for officers who deploy it as a case management resource is culturally derived and contextual, situationally contingent and occupationally relevant. To comprehend its cultural rather than officially posited meaning requires that it should be subject to a process of research-in-action, that is to say that to be effective in identifying and seeking

resolution to the cautioning problematic, research must seek to capture the ways in which cautioning decisions become operationalised in the hands of the officers who are empowered to make use of them.

Such a theoretical baseline places its own methodological and ontological demands upon the research project and particularly upon the means by which data are collected. For me this has meant an ethnographic investigation into the 'natural attitude' of cautioning practices and processes within their dramaturgical setting (the police custody office). Access to this undisturbed life-world has been sought through the adoption of participant observation which, by virtue of its covert nature, has attempted to overcome the typical informational impediments set up by organisational gatekeepers against open researching of the police.

The statistical underpinnings of much research on cautioning assume the production of those statistics to be largely unproblematic and presuppose the picture they paint to be a close facsimile of the actual cautioning situation. This cannot be the case if cautioning is a socially constructed phenomenon, for if this is so, statistics represent simply the numerical consequences, realised through police accounting procedures, of culturally driven and mediated action. My research findings, following on from Cain, 1973, Holdaway, 1983 & Sanders *et al* 1991, suggests that police utilise official accounts and reports of their actions as opportunities for justificatory actions. Police narratives seek to align occupational practice with the official discourse of rules, law, regulations and guidelines, rendering police actions and decisions as unproblematic. 'Rather than the criteria in these guidelines guiding decision-making they end up justifying it.' (Sanders & Young, 1994, p.234). Official statistics are contingent upon these very police accounts and flow directly from them, as such they *are* problematic. At the same time statistical data about cautions may reveal inconsistency in cautioning practices but they cannot hope to reveal how such inconsistencies arose. If they cannot reveal upon what forms of police behaviour cautions are predicated they cannot seek to offer solutions as to how such inconsistencies might be resolved.

Historically, however, and largely irrespective of theoretical arguments concerning the essence of social meaning through social action, qualitative research, such as my investigation into cautioning, has been subject to something of a white-water ride with regards to questions of accuracy, validity, reliability and repeatability. I have examined and where possible responded to these well-rehearsed and often re-hashed criticisms in detail within chapter four and accordingly will not re-engage with them here. But the fact remains that micro-sociological investigations such as this will always be vulnerable to arguments that they are mere aberrations, 'glitches in the matrix' and that the small sample sizes and conversational basis of much data cannot be held to account for the totality of cautioning outcomes across the country. What happened over the two years of my research at a busy North London custody office isn't necessarily what happened in police custody offices elsewhere. Of course one might justifiably counter that there is equally no evidence to support a conclusion that such activity isn't typical and prevalent, certainly the statistics cannot support such a position.

The fact remains that whilst modest in scope and small in size, this research *is* revealing, exposing the cultural practices of a 'force at work' (Holdaway, *Op Cit*) as they consider cases and deal with offenders, controlling meanings and the decisions which are their consequence, changing suspect's lives and life opportunities along the way. This research *is* also compelling of change. It exposes cautioning as the practical policing resource that it has become and as a central means by which officers extend their power and control over suspects and cases and through which they pursue both their individual and collective aims and objectives. We can no longer wait for the next piece of research to come along that adds further weight to the overwhelming case against retaining the cautioning status quo. The current situation cannot be allowed to prevail in which the police have unfettered control over and discretionary hegemony in case disposal decision-making for adult suspects. But movement away from a system of diversion that has spawned financial and managerial benefits along the way and

has become such an entrenched part of modern policing will never be easy and, because of this, remains unlikely. But in excess of 100,000 adults each year are subject to the extra-judicial administrative justice of culturally derived police adult cautioning practices and each deserves greater protection under the law from the discretionary activities of its key enforcement agents. But if change is needed, and it clearly is, then what form should it take and why hasn't it been tried before?

Towards a new system of adult cautioning

Existing research into cautioning, both adult and juvenile, over the last decade has identified many fundamental problems with the way this case disposal method is utilised (McConville *et al.* 1991, Sanders, 1994, 1997, 1988, Sanders & Young, 1994, Brogden *et al.*, 1988, Pratt, 1986, Campbell, 1997), problems that my own findings have confirmed. This existing research has, by and large, informed the ongoing debate on formal cautioning by the police and has offered-up a wide variety of policy recommendations aimed at resolving these identified shortcomings and concerns. Despite these recommendations however, little has changed. Cautions remain a significant means by which police deal with suspects with over 30% of all adult cases dealt with in this way, yet the pre-conditions, criteria and discretionary latitude contained within the initial Home Office guidelines on cautioning, first issued in 1985, remain almost unaltered in 2000.

Transferring the cautioning process to an external review panel

This stasis is particularly evident in adult cautioning, which has been largely immune to the developments that have taken place in police case disposal decision-making for juvenile suspects over the last ten years. Under the current arrangements, the cases of younger suspects (below the age of 17 years) are externally reviewed prior to any decision to prosecute or divert from prosecution. This review process is a multi-agency review by a youth offender team or juvenile

bureau. These case-review panels contain representatives from social services, the local education authority, the probation service as well as the police and stand between the police and the decision to caution, mediating decision-making concerning questions of diversion and prosecution post arrest and pre-trial. At the centre of such considerations is the offending youth.

Although not without its critics (see for example; Lee, 1995, p.315) juvenile arrangements do go some way to overcoming the criticisms of cautioning that arise from its total control by the police (as is the case with adult cautioning). Juvenile case review arrangements do at least allow for the external review of cases outside of the immediacy of the custody environment and accordingly raise the decision making process beyond a culturally 'satisficing' one (Klein & Zsombok, 1991 & 1992). By satisficing I mean a decision that both *satisfies* the socially organised occasions of its use, rendering it meaningful for actors as socially orientated action, and which proves *sufficient* to allow officers to pursue their individual and collective purposes-at-hand.

Whilst due process protections are still notably much reduced in such juvenile case review arrangements (not allowing for legal advocacy for example), the multiplexed nature of subsequent decision making does at least provide for a convergence of agendas, reducing (although not eradicating) the potential for instrumental dispositions that serve only the objectives of a single organisation or representative. For example, whilst collectively, such case review panels may still articulate fundamentally crime-control objectives (efficiency, cost-reduction, timeliness, etc) they are unlikely to pursue face-saving, or entrepreneurial objectives such as the covering-up of malpractice, the squaring away of low-evidence cases or the negotiated justice that arises from swapping cautions for information or that which is aimed at the sustenance of police/informant relationships.

Even the delayed nature of the decision in such case-review arrangements, taking place some time after arrest, allows for a separating-out of the impact upon officers of suspect behaviour and appearance from the outcome that follows days or weeks later. This disconnection was identified by McConville *et al* in their own research in 1991 in which they noted:

Failure to consider, or be consistent about official guidelines is particularly evident, and not surprising, when we consider the *instant* nature of so many of these decisions. Instant cautions are inevitably more prone to routinization than are decisions on files. They are also more vulnerable to emotion. As the custody officer put it in AT-J53/J54:

‘when someone sits and looks at it in a file coldly the next morning it probably gives them a slightly different picture to what I see – the toe rag coming in f’ing and blinding at all and sundry ... straight away you think ‘well yeah. OK. There we go’, perhaps an independents says no, NFA. (McConville, Sanders & Leng, 1991, p.115).

It follows, that the benefits that accrue from external review arrangements in juvenile cases could likewise be present for adult suspects if the same external review arrangements existed. Under parallel arrangements, the cases of adult suspects would then be passed to an adult offender team external to the police but with police representatives included amongst its staff. As with its juvenile counterpart, such a case review body would be tasked to consider appropriate case disposals by reviewing each case in light of existing cautioning and prosecution presumptions and criteria. Although the pre-conditions and cautioning criteria used by this adult offender case review team would be identical to that used by the police at present, the meaning that these pre-conditions and criteria would hold for team members would be constructed from within a wholly different

occupational culture that places the offender rather than issues of control, performance, clear-ups or face-saving measures as its central focus.

Under current prosecution arrangements for juvenile suspects, the police are only able to pursue an immediate unilateral prosecution in exceptional circumstances and even then a full case file must be submitted to the youth offender team or juvenile bureau laying out the reasons for this course of action. In practice, the immediate charge of juvenile offenders is a rare occurrence, the vast majority of cases necessarily being passed for external review and disposal decision by a youth offender team. The consequence of this is that for juvenile suspects the police have almost completely lost the right to make prosecution and diversion decisions outside of a multi-agency structure. If similar arrangements were adopted for adult offenders, the power to make case disposal decisions unilaterally would be lost to the police completely.

This option has a number of significant weaknesses however. As with juvenile arrangements, the administrative basis of justice remains. It is still extra-judicial decision-making and accordingly, due process rights such as the right to trial, an adversarial testing of the evidence and the identification of legal defences are absent. Such external case-review teams lack legal training and expertise and questions as to proof beyond reasonable doubt and guilt under the law (rather than guilt by presumption) will be given a social-worker's, a police officer's or an education welfare officer's rather than a legal response. 'Prosecuting solicitors used frequently to complain that police officers not only failed to understand the law but also refused to accept their ignorance in these matters.' (Sanders, 1988, p.516). Given that police representatives on multi-agency case review teams have the most legal training of any team member, questions must remain concerning the ability of these panels to identify legal defences and clarify complex questions of *mens rea*. On a more structural level, the process of populating such external multi-agency review bodies with staff from professions such as social work and teaching has led to the criticism that by so doing we are 'injecting police ideology

into the caring professions.’ (Sander & Young *Op Cit.* p.247 & Lee *Op Cit.*), and that multi-agency work involving the police is ‘a police-led strategy designed to take over other agencies and use them for its own ends of total policing.’ (Scruton, 1985).

The externality and independence from the police that such a case-review panel would need to secure in-order to ensure more equitable case disposal decisions is further threatened by evidence of police propensity for case construction. As has been argued elsewhere, written accounts of police action (arrest reports, summaries and case files) seek to align the world of practical police-work, the on-the-street activities of its operational officers, with the official discourse of disposition. Complex interactional police/suspect encounters are rendered ‘understandable’ for *informed* audiences as unproblematic representations of rules-in-action. Evidence that counters or weakens the prosecution case is omitted, evidence which supports it amplified. The offending actions of the suspect are expressed within police accounts through recourse to legal rhetoric as being straightforward behavioural manifestations of statutory words and phrases which in turn (and through such use) become presentational rather than inhibitory devices.

Although the police always complain about paperwork (Shapland & Hobbs 1997) and claim that it restricts their ‘real’ function as crime-catchers, they are all too well aware that it is through paperwork (or its absence) that they are able to provide a controlled and selective presentation of their activities for external scrutiny. Police accounts and police records do not reflect the social relations which have occurred; rather they... *resolve the situation* (Burton and Carlen, 1979, 0.137) ... by suppressing and de-legitimizing alternative accounts. (McConville, Sanders & Leng, 1991, pp. 80-81).

Members of external case review panels were not present when a suspect was arrested and brought before a custody officer at the police station; they were not privy to conversations between the suspect and police during in-custody procedures and had no access to witnesses or victims during evidence gathering procedures. As such they are entirely reliant upon the written version of events as provided to them by the officer in the case. The police author of such a report is aware of this and is, as a consequence, able to extend his control (through the written word) over the definition of the unfolding situation by framing the meanings that each element of the case should hold for external decision-makers. This is true whether the external review of the case is by a multi-agency case-review panel or by the Crown Prosecution Service.

Critics of this argument will perhaps suggest that such a position necessarily brands police as liars or manipulators of 'truth' but this is to misunderstand the socially constructed nature of any written account of social action that holds meaning for the author and, through the use of narrative and rhetorical devices, becomes rendered comprehensible to the reader. A written account of historical action necessarily rests upon a selective focusing of attention by the officer back upon his stream of consciousness of the arrest encounter in an effort to capture from within that duration-of-experience those elements deemed to have meaning and relevance to the officer's current project-at-hand (in this case, accounting for the prior arrest). Through this process of reflective and selective attention, the officer is able to render the interactional flow of his encounter with the suspect into discrete policing action that finds meaning through integration within and articulation of his culturally derived stock-of-knowledge concerning offences, offenders, grounds for arrest, just deserts, seriousness etc. The definitional control that flows from this selective ascription of meaning to reflected-upon-experience becomes extended through written case constructions and provides for instances in which case disposal outcomes are pre-supposed and pre-encoded by officers within their arrest and custody accounts and case files, providing

indexical triggers that serve to shape and drive the sense-making and decision-making activities of the external case review team.

Transferring the cautioning process to the Crown Prosecution Service

If the linear progression of cautioning recommendations is logically followed, the next most suitable body, after an external multi-agency case-review panel, that would seem eligible to take over responsibility from the police for the administration of formal adult cautions would be the CPS. Indeed this has been a central argument within the ongoing debate on caution reform. Evans and Wilkinson argued that greater liaison between police and the CPS over cautioning decision-making might lead to reduced disparity in cautioning rates and thus a more equitable cautioning system (Evans & Wilkinson, 1990) whilst Sanders argues that transferring of cautioning to the CPS would overcome questions as to the legal expertise and culturally driven nature of police case management decision making:

The present system differentiates between prosecution and diversion decisions. Different structures are provided for each. But every prosecution decision is really a decision to not divert, and vice versa. Discretion therefore, should be placed at the apex of the system, i.e. with the CPS (as it is in Europe: Tak, 1986). If all decisions whether or not to prosecute were to go through the CPS, the police could recommend more diversions without taking on a quasi-judicial role. An exception could be the police's informal warning, which could be safely retained, and which cannot be eliminated anyway. This could become one of the roles of the CPS, in which prosecution and diversion would be equal responsibilities, or in which diversion could dominate as in the current juvenile cautioning guidelines. The CPS could then control three crucial elements. First volume: diversion could be substantially expanded,

subject to new alternatives being devised. Second, consistency: since far fewer and more highly trained personnel would be making decisions, closer monitoring and control could be effected. Third safeguards for suspects: to rely on the police, who build the case against the suspect, to safeguard those same suspects' rights is to require super-human qualities of the police. CPS personnel are more detached from their cases and they are trained, to use Packer's (1969) evocative terminology, in the rhetoric of Due process rather than Crime Control. (Sanders, 1988, p.525).

Placing the decision to prosecute or to divert from prosecution in the hands of the CPS would arguably resolve the many difficulties associated with either leaving cautioning in the hands of the police or setting up external case review panels for adult offenders. Legally trained individuals are more likely to identify legal defences and comprehend complex legal issues such as intent and questions of *mens rea*. They are perhaps more likely to hold to due process ideals, although this is questionable given their existing basis of legitimation as the *prosecution* arm of the criminal justice system.

However, as has been intimated above, the CPS are not immune from the impact of police case construction through written reports, case files and arrest notes and have no investigative powers to look into such cases in-order to test police versions of events (at best they can ask the police to obtain more evidence). As such, at least in their current configuration and given their current mandate, they must take police case files on face value. Case disposal decisions would necessarily follow from what the police have said about the offence and the suspect. Moreover, the CPS would remain on the prosecution side of the adversarial divide, how could it be otherwise? 'Expecting such an accusatorial body to prioritise the suspect's rights and best interests in an inquisitorial fashion is almost as unrealistic as expecting the *police* to carry out this dual role.' (Sanders, *Ibid.* pp. 525-6).

Furthermore, a caution, following review of a case by the CPS, remains an administrative finding of guilt, an administrative conviction and thus administrative justice. It would remain as it is now, both extra-judicial and extra-judicial. The evidence in the case and the open admission of guilt beyond reasonable doubt would remain untested and in the hands of the police as the body who must, following the CPS decision, physically administer the caution on their behalf. Whether admission of guilt precedes or follows submission of cases to the CPS for review, this aspect of cautioning would rest with the police for their determination.

What then is to be done with cautioning? Its basic tenets *are* valid. Diversion offers a means by which offenders are offered an opportunity to turn away from future criminality and thus avoid the stigmatising consequences of labelling that arguably result from injection into the criminal justice system, but at what cost to individual suspects who are currently vulnerable to the occupationally driven manner in which police both understand and deploy cautions or withhold them?

Transferring the cautioning process to the courts.

What is needed is a system of diversion that is external to the police *and* which retains due process safeguards. A system that offers offenders a means by which the evidence against them is rigorously tested within an adversarial environment, where the prosecution are required to prove their case beyond reasonable doubt, an environment in which legal defences are identified by legal professionals and the complexities of elements of the law such as intent and guilty mind are understood but at the same time a system that offers the possibility of diversionary opportunities to suspects once guilt is established.

How could such a system ever exist? By placing the decision to caution with the court. What I am advocating is a new structure for the determination and administration of cautioning as an integrated element within and potential

outcome of court-based justice, as opposed to the existing system of extra-judicial prosecution decision-making. Under these new arrangements the police would be required to submit *all* cases in which they have chosen to take action to the CPS for review of evidential sufficiency. Where there is *insufficient* evidence to prosecute, the CPS would discontinue the case, which must then be NFA'd by the police. Where, however, there is *sufficient* evidence to suggest that conviction is more likely than acquittal, the CPS would prepare the prosecution case and present it before the court. The evidence in the case would then be duly tested at the resulting trial through defence arguments, testimony by witnesses and cross-examination. Where guilt is established by the court the question of disposition is then examined and the cautioning criteria and pre-conditions considered by the judge or panel of magistrates. The presumption here would be a general presumption against punitive outcomes in cases of a petty nature and in relation to first-time offenders, turning them away from future offending and giving them a 'second-chance'. Diversion in such circumstances would thus be diversion away from more punitive (and thus stigmatising) outcomes such as fines, community service or imprisonment. The caution would become an outcome of justice following judicial review, a finding of guilt but not a criminal conviction.

From the outset, diversionary strategies have claimed legitimacy as a means by which suspects are diverted away from the stigmatising effects of consequential labelling following entry into the criminal justice system. But where does this stigmatic labelling process begin and where does it end? The internalisation of deviant labels is most likely to follow conviction and sentence, but a caution administered by a court need have no greater future consequences than a caution administered by the police at present, officially recorded and citeable in any future appearance before a court, but not a punishment nor a sentence. Accordingly, I would suggest that cautioning by the courts would not lead to increased offending rates as a result of greater labelling stigmatisation and the internalisation of offender and deviant self conceptions, this would necessitate

deeper penetration into the system, for example through custodial sentencing or repeat convictions.

Such an arrangement would have other benefits also, the voice of the victim would have greater impact upon the cautioning decision, as the victim would be called to give evidence. Also, situations in which suspects could benefit from measures such as treatment for alcoholism or drug abuse or the help of social services would be identified following the establishment of guilt by the court and could become a condition of the administering of a caution. Currently, cautions circumvent such processes, preventing treatment. (Pratt, 1986). Additionally, individuals who have an established record of past criminal convictions could nonetheless be cautioned in circumstances where they are accused of only petty misdemeanours, thus preventing a continual escalation of sanctions which do not reflect the circumstances of the particular case under consideration. Reparation for victims could likewise be integrated within a court-based cautioning system if this were considered appropriate by the bench.

The benefits of court based cautioning

The benefits of court based cautioning may be summarised as follows:

- Legal defences would be examined and tested through adversarial trial by solicitors, barristers and judges trained in criminal law.
- Complex legal questions such as intent, criminal attempts and *mens rea* (guilty mind) would be examined and tested through adversarial trial by solicitors, barristers and judges trained in criminal law.
- A suspect's right to trial is protected
- A suspect's right to legal representation is assured

- Post-trial decision making such as the consideration of cautioning pre-conditions would be based on case law and legal precedent rather than personal precedent.
- Conceptions of the seriousness of an offence as this apply to its appropriateness for caution would be based on case law and legal precedent rather than personal precedent.
- The requirement that a suspect's guilt be proven beyond all reasonable doubt would be protected.
- The victim's testimony, views and feelings about the offence would be fully considered.
- The decision to caution would be external to prosecution agencies and agents.
- Instrumental uses of cautioning such as to resolve weak evidence, secure clear-ups and performance targets, protect informants or cover up police mal-practice would be stopped.
- Court based cautioning is more likely to be viewed as an official sanction and is thus more likely to deter suspects from future offending.
- Courts would be able to attach conditions upon cautions such as victim reparation or compensation.
- The occupational culture of court-based agents is more transparent and subject to several audit mechanisms and other safeguards such as a suspect's right to appeal.

- Care and treatment options such as those for alcohol and drug dependent offenders can be identified and activated, perhaps being attached to the caution.
- Court based cautions offer greater flexibility in post-trial decision-making, allowing previous offenders to be nonetheless cautioned for trivial misdemeanours despite their offending history thus preventing an escalation of court-based sanctions.
- The need for courts to discharge offenders as a means of overturning what they adjudge to be ill-conceived prosecutions would be reduced (see Dingwall and Harding, 1998, p.7 and Wasik, 1985, p.222).
- Court based cautioning decisions are removed from the emotional and cultural immediacy of the police custody setting.

Concluding comment

Every individual arrested and accused of criminal activity has the right to the protections and safeguards of due process. The findings of this research project provide compelling evidence that these safeguards and protections are largely absent in cases dealt with by the police under the provisions of the present formal adult cautioning system. Questions of guilt and innocence, of admissions and confessions, of intent and just deserts must be questions for the court to decide. In the words of Sir Alexander Cockburn, the Attorney General in 1855 ‘prosecutions by the police (are) not consistent with the proper administration of public justice.’ (Hay, D. and Snyder, E. 1989 p.186⁴). The time has come to move the process of cautioning away from the police. Diversion must not be diversion from justice.

⁴ This quote from Sir Alexander Cockburn is from the report by the Committee on Public Prosecution, 1845/5, Q2396.

The police must no longer be required to be judge and jury in their own police stations.

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Appendix A – Home Office Circular 18/1994 ‘The Cautioning of Offenders’



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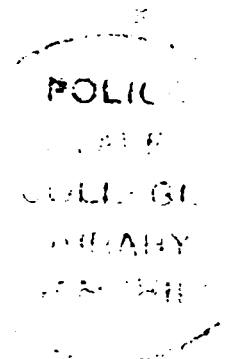
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Our reference

15 March 1994

Chief Officer of Police

The Chief Crown Prosecutor
The Clerk to the Justices (with a copy for the Chairman
of the Bench)
The Clerk to the Magistrates' Court Committee
The Circuit Administrator
The Court Administrator
The Chief Clerk to the Crown Court
The Chief Probation Officer
The Director of Social Services



✓ Sir,

HOME OFFICE CIRCULAR 18/1994

THE CAUTIONING OF OFFENDERS

purposes of this Circular are to provide guidance on the cautioning of offenders, and in particular -

- to discourage the use of cautions in inappropriate cases, for example for offences which are triable on indictment only;
- to seek greater consistency between police force areas; and
- to promote the better recording of cautions.

This Circular, the terms of which have been discussed in the Association of Chief Police Officers and the Crown Prosecution Service, replaces Circular 59/1990 which is hereby cancelled. Some amendments have been made to the national standards for cautioning established by Circular 59/1990; the revised standards, which should be read in conjunction with

s Circular, are attached. The general principles underlying these standards are unchanged: properly used, cautioning continues to be regarded as an effective form of disposal, and which may in appropriate circumstances be used for offenders of any age.

Circular 59/1990 left cautioning decisions to the discretion of the police; there is no intention of reducing this discretion, which in the vast majority of cases is properly used. The decision to caution is in all cases one for the police, and although it is open to them to seek the advice of multi-agency panels, this should not be done as a matter of course. It is important that cautions should be administered quickly, and where such advice is sought it must not lead to unnecessary delay.

It is apparent that there is some inconsistency between forces about the circumstances in which they consider it appropriate to administer a caution. It is impossible to lay down hard and fast rules such as that first-time offenders must be cautioned, or that certain minor offences should attract only a caution regardless of the offender's record. It does the presumption in favour of diverting juveniles from the courts mean that they should automatically be cautioned, opposed to prosecuted, simply because they are juveniles. Ultimately the proper use of discretion is a matter of common sense: the questions to be asked in each case are -

- whether the circumstances are such that the caution is likely to be effective, and
- whether the caution is appropriate to the offence.

serious offences

Previous guidance discouraged the use of cautioning for the most serious offences, especially for those triable only by indictment. Statistics indicate, however, that cautions are administered in such cases - there were 1735 in 1992. Cautions have been given for crimes as serious as attempted murder and rape: this undermines the credibility of this disposal. Cautions should **never** be used for the most serious indictable-only offences such as these, and only in exceptional circumstances (one example might be a child taking another's pocket-money by force, which in law is robbery) for other indictable-only offences, regardless of the age or previous record of the offender.

6. Other offences, less grave in themselves, may nevertheless be too serious for a caution to be appropriate. The factors which will be relevant in making this judgment are too varied for it to be practicable to list them, but they include the nature and extent of the harm or loss resulting from the offence, relative to the victim's age and means; whether the offence was racially motivated; whether it involved a breach of trust; and whether the offence was carried out in a systematic and organised way. Comprehensive lists of such 'gravity factors' have been drawn up by several forces, and these can help in assessing the seriousness of an offence.

7. Efforts should be made to find out the victim's view about the offence, which may have a bearing on how serious the offence is judged to be. It should not, however, be regarded as conclusive. Where a caution has been given and the victim requests the offender's name and address in order to institute civil proceedings, the information should be disclosed, unless there is good reason to believe that it might be used for an improper purpose such as retaliation.

The offender's record

8. Research into a sample of offenders who were cautioned in 1991 indicates that 8 per cent had already received two or more cautions. Multiple cautioning brings this disposal into disrepute; cautions should not be administered to an offender in circumstances where there can be no reasonable expectation that this will curb his offending. It is only in the following circumstances that more than one caution should be considered:

- where the subsequent offence is trivial;
- or
- where there has been a sufficient lapse of time since the first caution to suggest that it had some effect.

Consistency

9. There are significant variations between forces - and indeed between stations within forces - in the number of offenders who are cautioned as a proportion of those who are either cautioned or convicted. In 1992 this figure for indictable offences varied, as between forces, from 27 per cent to 57 per cent. This discrepancy may result from

1. Differing perceptions of the boundary between informal warnings and formal cautions (see below), or of that between formal cautions and prosecutions. Either way, this degree of variation is undesirable. Accordingly, forces which caution a disproportionately high or low number of offenders should ensure that their force guidelines on cautioning are sound and are being interpreted sensibly.

10. Where there is doubt about whether a prosecution should be brought or a caution given in a particular case, it will often be useful to seek the opinion of the Crown Prosecution Service at an early stage in order to avoid disagreement (and in particular the undesirable outcome of an offender escaping without censure of any kind through being considered to be suitable neither for a caution nor for prosecution). If it is the offender's history, rather than the nature of the offence, which renders the case in the view of the police unsuitable for a caution, the Crown Prosecution Service's attention should be drawn to the fact.

Recording

11. The accurate recording of cautions is essential in order both to avoid multiple cautioning and to achieve greater consistency. This will be made easier when computerised national criminal records are introduced, which will permit a brief description of the offence to be recorded. In the meantime, existing recording systems should be improved, where possible, particularly so as to provide a central force record where this does not already exist. It is essential that records should be checked before a caution is given. When an offender is cautioned on the same occasion for more than one offence, he should be counted as having received one caution only.

12. If a person who is initially suspected of a serious offence is found to have committed a less serious one for which he is then cautioned, it is important that the caution should be recorded as having been given for the lesser offence.

'Informal cautions'

13. There is no intention of inhibiting the practice of taking action short of a formal caution by giving an oral warning, but this should not be recorded as a caution in the criminal statistics nor (unlike a caution) may it be cited in subsequent court proceedings. The expression "informal

„caution" used in Circular 59/1990 is confusing and is not recommended.

Supporting cautions

14. Circular 59/1990 made it clear that police officers should not become involved in negotiating reparation or compensation, although these were features which might properly support the use of a caution. In several areas 'caution plus' schemes incorporating voluntary arrangements of this kind have been developed, apparently to the satisfaction of victims. Since caution plus needs further evaluation before a decision can be made on its future, it would be helpful if forces participating in such schemes would monitor the results.

15. In the case of juvenile offenders, it will often be desirable for the police to liaise with local statutory and voluntary agencies about the ways in which assistance might be offered to the juveniles and their families to prevent re-offending. Such support can be especially valuable if a young person is cautioned for a sexual offence.

16. Any enquiries about this Circular should be addressed to Richard Chown, C1 Division, Home Office, Queen Anne's Gate SW1A 9AT, telephone 071-273 2535.

Yours faithfully,

Richard Stoa

RICHARD STOATE
Head of C1 Division

**Appendix B – The National Standards for Cautioning (Revised)
1994.**

AIMS

1. The purposes of a formal caution are -

- to deal quickly and simply with less serious offenders;
- to divert them from unnecessary appearance in the criminal courts; and
- to reduce the chances of their re-offending.

Note 1A A caution is not a form of sentence. It may not be made conditional upon the satisfactory completion of a specific task such as reparation or the payment of compensation to the victim. Only the courts may impose such requirements.

DECISION TO CAUTION

2. A formal caution is a serious matter. It is recorded by the police; it should influence them in their decision whether or not to institute proceedings if the person should offend again; and it may be cited in any subsequent court proceedings. In order to safeguard the offender's interests, the following conditions must be met before a caution can be administered -

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- the offender must admit the offence;
- the offender (or, in the case of a juvenile, his parents or guardian) must understand the significance of a caution and give informed consent to being cautioned.

Note 2A Where the evidence does not meet the required standard, a caution cannot be administered.

doubts about his mental health or intellectual capacity).

Note 2C If an offence is committed by a juvenile under the age of 14, it is necessary to establish that he knew that what he did was seriously wrong.

Note 2D In practice consent to the caution should not be sought until it has been decided that cautioning is the correct course. The significance of the caution must be explained: that is, that a record will be kept of the caution, that the fact of a previous caution may influence the decision whether or not to prosecute if the person should offend again, and that it may be cited if the person should subsequently be found guilty of an offence by a court. In the case of a juvenile this explanation must be given to the offender in the presence of his parents or guardian, or other appropriate adult. The special needs of other vulnerable groups should also be catered for, in accordance with the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers.

PUBLIC INTEREST CONSIDERATIONS

3. If the first two of the above requirements are met, consideration should be given to whether a caution is in the public interest. The police should take into account the public interest principles described in the Code for Crown Prosecutors.

Note 3A There should be a presumption in favour of not prosecuting certain categories of offender, such as elderly people or those who suffer from some sort of mental illness or impairment, or a severe physical illness. Membership of these groups does not, however, afford absolute protection against prosecution, which may be justified by the seriousness of the offence.

Note 3B Two factors should be considered in relation to the offender's attitude towards his offence: the wilfulness with which it was committed and his subsequent

attitude. A practical demonstration of regret, such as apologising to the victim and/or offering to put matters right as far as he is able, may support the use of a caution.

Note 3C The experience and circumstances of offenders involved in group offences can vary greatly, as can their degree of involvement. Although consistency and equity are important considerations in the decision whether to charge or caution, each offender should be considered separately. Different disposals may be justified.

VIEWS OF THE VICTIM

4. Before a caution can be administered it is desirable that the victim should normally be contacted to establish -

- his or her view about the offence;
- the nature and extent of any harm or loss, and their significance relative to the victim's circumstances;
- whether the offender has made any form of reparation or paid compensation.

Note 4A If a caution is being, or likely to be, considered its significance should be explained to the victim.

Note 4B In some cases where cautioning might otherwise be appropriate, prosecution may be required in order to protect the victim from further attention from the offender.

Note 4C If the offender has made some form of reparation or paid compensation, and the victim is satisfied, it may no longer be necessary to prosecute in cases where the possibility of the court's awarding compensation would otherwise have been a major determining factor. Under no circumstances should police officers become involved in negotiating or awarding reparation or compensation.

ADMINISTRATION OF A CAUTION

5. A formal caution should be administered in person by a police officer, and wherever practicable at a police station. A juvenile must always be cautioned in the presence of a parent, guardian or other appropriate adult. Members of other vulnerable groups must be treated in accordance with Code of Practice C.

Note 5A The officer administering the caution should be in uniform and normally of the rank of inspector or above. In some cases, however, a Community Liaison Officer or Community Constable might be more appropriate, or in the inspector's absence the use of a sergeant might be justified. Chief Officers may therefore wish to consider nominating suitable 'cautioning officers'.

Note 5B Where the person is elderly, infirm or otherwise vulnerable, a caution may be administered less formally, perhaps at the offender's home and in the presence of a friend or relative or other appropriate adult.

RECORDING CAUTIONS

6. All formal cautions should be recorded and records kept as directed by the Secretary of State. The use of cautioning should also be monitored on a force-wide basis.

Note 6A Formal cautions should be cited in court if they are relevant to the offence under consideration. In presenting antecedents, care should be taken to distinguish between cautions and convictions, which should usually be listed on separate sheets of paper.

Note 6B Chief officers may also wish to keep records of cases in which action short of a formal caution has been taken, and the reasons for it. But care should be taken not to record anything about an individual which implies that he is guilty of an offence when the evidence is in any doubt. Offences dealt with by action short of a formal caution may not be cited in court.

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